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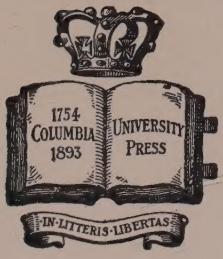
WILLIAM ARCHIBALD DUNNING, PH.D., LL.D.

LIEBER PROFESSOR OF HISTORY AND POLITICAL PHILOSOPHY
IN COLUMBIA UNIVERSITY

BY HIS FORMER PUPILS THE AUTHORS



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PREFACE

One of the most striking facts in the recent history of higher education in the United States has been the awakened interest in historical research and in the study of the social sciences. Among those who have contributed much toward the creation and stimulation of this interest, Professor William A. Dunning of Columbia University occupies a preëminent place. For more than twenty-five years he has been a distinguished member of a distinguished faculty and during this period hundreds of toilers for the doctorate have sat at his feet and received inspiration and wisdom from his teaching. His published contributions to the literature of later American history and the history of political theory have been numerous and substantial.

It was inevitable that in the natural course of events he should arrive at the goal which awaits the most eminent historical scholars of the country, namely, the presidency of the American Historical Association, a body of which he has long been one of the most active and influential members, and it was when this honor came to him a year ago that a group of his former students conceived the idea of this testimonial of their regard for him as a teacher and of their admiration for him as a man and a scholar. After some unavoidable delays the authors are now able to offer the public this modest contribution to the historical literature of a period in the study of which he has done so much to stimulate interest among investigators, and it is their hope that it may not prove unworthy of him whom they all honor and hold in such high esteem.

We desire to acknowledge our indebtedness to President Nicholas Murray Butler and to Professor William H. Carpenter, Secretary of the Columbia University Press, for their deep interest in the project and for substantial assistance which has made possible the publication of these essays in the form in which they now appear.

JAMES W. GARNER.

Urbana, Illinois,
October 5, 1914.

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I

DEPORTATION AND COLONIZATION

AN ATTEMPTED SOLUTION OF THE RACE PROBLEM

By WALTER L. FLEMING

PROFESSOR OF HISTORY IN THE LOUISIANA STATE UNIVERSITY

I

DEPORTATION AND COLONIZATION

An Attempted Solution of the Race Problem

Deportation and colonization of the negroes as a solution of the race problem of the United States is not a modern plan. It is as old as the feeling against slavery and the prejudice against the negro race. Had the slaves been of the same race as their masters, there would have been no suggestion of deportation and colonization; the history of the unfree white classes in medieval Europe and in colonial America shows what the solution would have been. But in regard to black slaves there was another problem besides that of status — it was that of race. Was it possible for two free races, unlike in many respects, to inhabit the same territory without racial conflict? After the emancipation of the negro race, this was the problem that had to be solved.

A majority of the people of the later colonial period and the early nineteenth century who opposed slavery believed that deportation must follow emancipation. The plan for the colonization of free negroes in tropical countries had its origin in New England. It was first publicly advocated in 1770 by the Rev. Samuel Hopkins of Newport, Rhode Island, who for several years carried on an agitation on a small scale. Considerable interest in the project was aroused, and numerous individuals who were opposed to slavery and to the presence of negroes in the American population regarded it as the proper solution of the difficulties arising from emancipation. Thomas Jefferson was, in his time, the leading advocate of foreign colonization. He believed that slavery was not a permanent institution and that the negroes when emancipated could not live in the same country with their former masters on terms of equality. In 1784 in his "Notes on Vir-

ginia" he suggested foreign colonization as a possible solution of the problem. In 1801 the Virginia legislature requested Governor Monroe to correspond with President Jefferson in regard to the purchase of lands abroad "whither persons obnoxious to the laws and dangerous to the peace of society may be removed." In reply Jefferson indorsed the plan of colonization and suggested as possible colonies the West Indies, especially San Domingo. A year later he endeavored to obtain the consent of the English authorities to receive American free negroes into the colony of Sierra Leone, and, failing in this, he tried, again also without success, to obtain from Portugal lands in Brazil. In his correspondence Jefferson took the view that the blacks must be drawn off gradually to some foreign land and there protected for a time. In 1804 the Virginia legislature suggested that he set apart a portion of Louisiana as a territory for negroes, but with this plan he was not impressed.[1]

Out of this feeling on the part of thoughtful men grew the American Colonization Society which was developed between 1803 and 1817. The actual organization of the Society was probably hastened by the renewed demand of the Virginia legislature in 1816 that the United States should acquire land outside the United States to which free negroes could be transported. Several Southern states indorsed the objects of the Society,[2] the principal one of which was to encourage emancipation by providing a way for the removal of the freed negroes from the country. Prominent men, among whom were Jefferson, Adams, Madison, Marshall, and Clay, supported the work of the society. Most of the members, however, were from the North and from the border slave states, few residing in the plantation states; and branches of the organization were established in all the states that had large numbers of free negroes. The sentiment that resulted in the formation of the Colonization Society also caused Congress to provide for the return to Africa of certain classes of free negroes

[1] Writings of Thomas Jefferson (ed. 1907), Vol. X, pp. 294, 326; Vol. XIII, p. 10; Vol. XV, pp. 102, 249; Vol. XVI, p. 8. Ames, "State Documents on Federal Relations," p. 195.

[2] Ames, "State Documents," p. 195.

and slaves captured from slave traders. The Society was used by Congress as its agent, $50 being appropriated to it for each negro carried back to Africa and maintained there for one year. Under this arrangement Liberia was organized as a colony for blacks, and by 1860 about 18,000 negroes had been transported thereto. During and after the Civil War about 2000 more were carried over.[1]

Some opposition to the Society arose in the lower South when the Northern opponents of slavery demanded that the United States government accept emancipation and deportation as a principle to be worked out as soon as possible. In 1824 the Ohio legislature suggested to the other states that the national government develop a plan of foreign colonization with a view to the emancipation and removal of all negroes, and that freedom should be given to all who at the age of twenty-one would consent to go to Liberia. This plan was indorsed by one slave state, Delaware, and six free states, Pennsylvania, Vermont, New Jersey, Indiana, Connecticut, and Massachusetts, but was disapproved by Georgia, South Carolina, Alabama, Missouri, Mississippi, and Louisiana. A few years later (1827) when the Colonization Society was asking for national aid on a large scale, the house of representatives seemed favorably inclined, and the legislature of ten states, including Missouri, Kentucky, Delaware, and Tennessee, indorsed the request of the Society, but the states of the lower South strongly objected. In general the South was quite willing for the free negroes to be removed from the country, but objected to the use of the Society as an active anti-slavery agency.[2]

The small numbers transported to Africa show that the Society did not and could not solve the free negro problem. For this failure there were several reasons: first, free negroes, hard as was their condition in America, seldom desired to go to Africa, and none except negroes captured from slavers could legally be forced to go; second, the work of the Society was hindered by the growth of radical abolition sentiment in the North during the second

[1] McPherson, "Liberia."

[2] Ames, "State Documents," p. 203. Herbert, "Abolition Crusade," pp. 41, 45.

quarter of the nineteenth century. The abolitionists, to a certain extent, denied the principle upon which the Colonization Society was founded, namely, that the black race was inferior to the white and that in American society there was no place for the free blacks. Those who advocated deportation were accused of encouraging race prejudice and thus strengthening the bonds of slavery. In the lower South, on the other hand, the Society was regarded as an abolition agency. The active efforts of the abolitionists, and the introduction of the slavery question into partisan politics, weakened the Society and caused greater regard for the rights of the blacks. However, until the Civil War contracts were regularly made between the Colonization Society and the Department of the Interior for the return to Africa of negroes captured from slavers.[1]

Few other efforts were made to colonize free negroes. Small numbers of them were sent to the Island of Trinidad, where the English employers were extremely anxious to get better trained labor than could be obtained from the natives,[2] and a colony was also located in Hayti. In 1862, when the question of acquiring territory for negro colonies came up, Senator Doolittle asserted that President Jackson had once proposed in a cabinet meeting to purchase land in Mexico for colonizing free negroes.[3]

The free negroes were not content with the position offered them in the Northern states before the Civil War. A national emigration convention of colored people held in Cleveland, Ohio, in 1854 issued an address giving the views of the blacks in regard to the situation in America and stating that there was hope for the race only in a new country. "No people can be free," they said, "who themselves do not constitute an essential part of the ruling element of the country in which they live. . . . A people to be free must be their own rulers"; in America the blacks, slave and free alike, would always be subject to the white man, and "the white race will only respect those who oppose their usur-

[1] Ho. Ex. Doc., 37th Cong., 2d Ses.
[2] Ho. Rept. No. 148, 37th Cong., 2d Ses., p. 24.
[3] Cong. Globe, 37th Cong., 2d Ses., pt. 4, App., p. 85.

pation and acknowledge as equals those who will not submit to their rule." The position of the free negro in the North, the address stated, was precarious; often they were kidnapped and sold as slaves to the South. Some friends of the blacks wanted to see them absorbed into the white race, on terms of equality, but this was impossible. Were master and slave of the same race, laws might easily destroy class differences, but such was not the case; the negro was set apart by his color, which the law could not change, and this marked him for the prejudice of the whites. Besides, the race should not be destroyed; it had a mission, for "in the true principles of morals, correctness of thought, religion, and law or civil government, there is no doubt but that the black race will yet instruct the world."

The Cleveland convention declared that sooner or later a struggle would arise between the colored and white races for control of the world; the colored races were twice as numerous as their overlording whites and would not much longer submit to the rule of the minority; there was no hope of justice from the white race, which for 2000 years had been encroaching upon the colored races. In order to attain national existence and to be ready for the great conflict, the convention declared that a proper home for the race must be found, a center for organization. And such a place could be found only where the black race was in the majority and constituted the ruling element. The part of the world best suited to this purpose was tropical America, — the West Indies, Central America, and part of South America, — where, it was said, the whites were weak and worthless, where a negro was regarded as their equal, and where as a citizen he was often preferred by the authorities, owing to the jealousy of outside interference in Latin-American affairs and the consequent desire of the natives "to put a check to European presumption and insufferable Yankee intrusion and impudence." The members of the convention were certain that the blacks could organize and maintain a national existence in tropical America. They had their own racial merits and in addition much of the civilization of the whites; and they had never failed to thrive whether in

freedom or slavery. In conclusion the Address declared: "This is a fixed fact in the zodiac of the political heavens, that the black and colored people are the stars which must ever most conspicuously twinkle in the firmament of this division of the western hemisphere." [1]

The Address is interesting as showing the opinions of many of the free negro leaders, and of the whites who advised them; it also shows that, perhaps because of the notoriety caused by the filibustering attempts of the time, tropical America, rather than Liberia, was being considered as the future refuge of free blacks.

Before the Civil War it is doubtful if any considerable number of Northern anti-slavery people, except the radical abolitionists, would have advocated emancipation without deportation. To the Southern non-slave holder, who had little sympathy with slavery, the free negro was nevertheless a bugbear, slavery only an attempted solution of the race problem, and if slavery were done away with, the negro must go. As evidence of the non-slave holder's dislike of the negroes, Senator Doolittle, during the debates of 1862 on deportation, declared, apparently upon authority, that Andrew Johnson, when governor of Tennessee in 1856, was called upon by the non-slaveholders in a certain district for arms with which to repress a threatened rising of the slaves. Investigation disclosed the fact that they really hoped to exterminate the slaves, and to protect the latter Johnson had to call out the militia.[2]

In his opinions Lincoln was representative of both Northern and Southern anti-slavery sentiment. Born in Kentucky and living in a border state of the North, he understood better than most Northerners the feelings of the non-slaveholders of the South. While opposing the extension of slavery to new territories, he did not, until forced to it as a war measure, favor abolition in the slave states. It was his opinion that the physical differences of black and white were so great that the two races could never live together in harmony on terms of equality. During the debates

[1] The Address is printed in Ho. Rept. No. 148, 37th Cong., 2d Ses.
[2] Cong. Globe, 37th Cong., 2d Ses., pt. 4, p. 84.

with Douglas he said that his first impulse, if the negro should be freed, would be to send them to Liberia. "Let us be brought to believe it is morally right and at the same time favorable to or at least not against our interest to transfer the African to his native clime, and we shall find a way to do it however great the task may be." [1] Lincoln never abandoned these views.

The advocates of gradual emancipation realized that in order to meet the objection to free negroes, some practical plan of procedure must be offered. Deportation and colonization outside of the United States was the usual plan suggested. During the '50's another argument was offered in support of this measure: it was that American free negro colonies in the tropics would serve to extend American civilization and American commerce. In 1857 Horace Greeley in the *Tribune* said: "It is obvious that in this great body of civilized negroes we have . . . a most powerful and essential instrument toward extending ourselves, our ideas, our civilization, our commerce, industry, and political institutions through all the torrid zone." A correspondent in the New York *Courier and Inquirer*, July 23, 1857, voiced a like sentiment when he wrote:

> "But the great consideration is that which men appear resolved to conceal from themselves. It shows us that this negro race must necessarily take possession of the tropical regions . . . to which they may be transported. They will expel the whites by the same law of nature which has given the blacks exclusive possession of corresponding latitudes in Africa. [We may hope that the South will want to give up slavery. If so the West Indies and South America are the places for the negroes] . . . It is therefore of the highest importance that those regions be kept open for that contingency." [2]

The Republicans of the border states and the West were, before 1860, strongly in favor of deportation. The most prominent advocates of this plan were Montgomery Blair, F. P. Blair, and J. R. Doolittle. Their letters contain many references to the colonization scheme. For example, in 1859 F. P. Blair wrote to Doolittle:

[1] Springfield Speech, June 28, 1857. Nicolay and Hay, Vol. VI, p. 354.
[2] Quoted in Ho. Rept. No. 148, 37th Cong., 2d Ses.

"I am delighted that you are pressing the colonization scheme in your campaign speeches. I touched upon it three or four times in my addresses in Minnesota and if I am any judge of effect it is the finest theme with which to get at the hearts of the people and [it] can be defended with success at all points. . . . I made it the culminating point and inevitable result of Republican doctrine."

Montgomery Blair wrote to Doolittle about the same date that the North should demand that the emancipated negroes who had been sent to the North by their former owners should be colonized by the general government

"Where they can have political rights and where their manhood would have the stimulant of high objects to develop it, . . . it would rally the North as one man to our ranks. It would do more than ten thousand speeches to define accurately our objects and disabuse the minds of the great body of the Southern people of the issue South that the Republicans wish to set negroes free among them to be their equals and consequently their rulers when they are numerous. This is the only point needing elucidation and comprehension by the Southern people to make us as strong at the South as at the North. If we can commit our party distinctly to this I will undertake for Maryland in 1860."[1]

But this phase of the anti-slavery attack had too short a time in which to develop. The Civil War began and the "contrabands" at once became a burden upon the government and a problem for the rulers. The deportation solution was again proposed by such men as President Lincoln and Senators Blair, Doolittle, and Pomeroy, by anti-slavery unionists of the border states, and numerous other individuals. In his first message, December 8, 1861, Lincoln suggested that provision be made for the colonization of freed negroes in a congenial climate. In order to do this he stated that territory would have to be acquired. And in regard to colonization and the purchase of territory he asked "does not the expediency amount to absolute necessity?"[2] A week later Senator Harlan of Iowa introduced a bill in the senate authorizing the President to acquire the necessary territory. It was

[1] "Publications Southern Historical Association," Sept., 1906.

[2] Lincoln, "Complete Works," Vol. II, p. 93 (Nicolay and Hay Ed.). See also Welles, "Diary," Vol. I, p. 150.

referred to the committee on territories,[1] but at the time nothing was done.

Early in 1862 the matter of deportation was again brought up in connection with the abolition of slavery in the District of Columbia. By the act of April 16, 1861, which abolished slavery in the Federal District, an appropriation of $100,000 was made to be expended under President Lincoln's direction in colonizing such negroes of the District of Columbia as might wish to go to Liberia, Hayti, and other black men's countries. The expense was not to exceed $100 each.[2] Lincoln did not think this a sufficient sum, and he had another bill introduced which became law on July 16, 1862. By this law $500,000 was appropriated for colonization purposes in addition to the $100,000 previously voted. The next day, July 17, 1862, another act was approved which authorized the President to colonize abroad the negroes made free by the confiscation acts. The proceeds from confiscated property were to be turned into the Treasury to replace the appropriations made for colonization.[3]

Lincoln and many of his advisers believed that the proposal to separate the races would make many who had been hesitating willing to accept an emancipation policy; even the Confederate non-slave holders would be impressed by it, they thought.[4] This feeling is reflected in the law of June 7, 1862, providing for the sale of lands in the South by the direct tax commissioners and the setting aside of one-fourth of the proceeds raised in each state to be paid after the war to that state to aid in colonizing the blacks.[5]

Lincoln was not content with these slight inducements to emancipation, and he had another bill introduced by Representative

[1] Cong. Globe, Dec. 10, 1861, p. 36.

[2] Statutes at Large, 37th Cong., 2d Ses., p. 378; "Official Records of the Rebellion," Ser. III, Vol. II, p. 276; Cong. Globe, 37th Cong., 2d Ses., pt. IV, App., p. 348.

[3] Cong. Globe, 37th Cong., 2d Ses., pt. IV, pp. 410, 413. Off. Recs., Ser. III., Vol. II, p. 885. Statutes at Large, 37th Cong., 2d Ses., p. 582.

[4] See Doolittle's speeches in Cong. Globe, 37th Cong., 2d Ses., pt. IV, App., pp. 83, 94.

[5] Statutes at Large, 37th Cong., 2d Ses., p. 425.

White of Indiana, who explained that the purpose was to assist emancipation of slaves and the colonization of the freedmen. By this measure it was proposed to appropriate $180,000,000 to purchase the 600,000 slaves belonging to unionist owners in the border states and $20,000,000 to be used in colonizing the negroes thus made free, "beyond the limits of the United States." White declared that $20,000,000 thus expended would repay the nation "a hundred fold in commerce." Evidently he had in mind a negro colonial system in the American tropics. The bill was favorably reported from the committee, but did not become a law, probably because of other colonization measures enacted about the same time.[1]

White also made, on July 16, 1862, an elaborate report as chairman of the committee on emancipation and colonization. This committee had been appointed pursuant to a resolution of the house, April 7, 1862, which is said to have been framed by Mr. Lincoln. The committee was directed to report upon three matters: (1) emancipation in the border states and Tennessee, (2) the practicability of colonizing freed negroes, and (3) whether the United States should aid emancipation and colonization. The committee reported that of the 1,200,000 slaves in the border states about half had been confiscated, or removed to the South, or were in refugee camps, while the other half belonged to "loyal" owners and should be paid for by the government, emancipated and colonized.

The committee explained at length the position of the border and Southern states in regard to emancipation; stated that much of the opposition to emancipation was due to a fear of too close association of races and consequent possible intermixture and to the feeling of the whites, especially in the border and free states, and declared that emancipation would result in economic competition of the races. It was the committee's opinion that

> "Apart from the antipathy which nature has ordained, the presence of a race among us who cannot and ought not to be admitted to our social

[1] Cong. Globe, July 16, 1862, pp. 3394, 3395. Ho. Rept., 37th Cong., 2d Ses., p. 32.

and political privileges will be a perpetual source of injury and inquietude to both. This is a question of color and is unaffected by the relation of master and slave. The introduction of the negro, whether bound or free, into the same field of labor with the white man is the opprobrium of the latter; and we cannot believe that thousands of non-slaveholding citizens in the rebellious states are fighting to continue the negro within our limits in a state of vassalage, but more probably from a vague apprehension that he is to become their competitor in his own right. [We believe that the white man can furnish all our labor and that] the highest interest of the white races . . . requires that the whole country be held and occupied by those races alone. . . . The most formidable difficulty which lies in the way of emancipation in most if not in all the slave states is the belief which obtains especially among those who own no slaves, that if the negroes shall become free they must still continue in our midst, and . . . in some measure be made equal to the Anglo-Saxon race. . . . The belief [in the inferiority of the negro race] . . . is indelibly fixed upon the public mind. The differences of the races separate them as with a wall of fire; there is no instance in history where liberated slaves have lived in harmony with their former masters when denied equal rights — but the Anglo-Saxon will never give his consent to negro equality, and the recollections of the former relation of master and slave will be perpetuated by the changeless color of the Ethiop's skin. [Emancipation therefore without colonization could offer little to the negro race. A revolution of the blacks might result, but only to their undoing.] To appreciate and understand this difficulty it is only necessary for one to observe that in proportion as the legal barriers established by slavery have been removed by emancipation the prejudice of caste becomes stronger and public opinion more intolerant to the negro race." [1]

To avoid these difficulties, to convince the poor whites that emancipation would not harm them and to give the negro an opportunity, the committee recommended colonization of freedmen in Central and South America and on the Islands of the Gulf of Mexico — a policy which would "restore to the tropics its own children." In those lands, it was declared, the whites had

[1] Ho. Rept. No. 148, 37th Cong., 2d Ses., Lincoln in December, 1862, in proposing compensated emancipation, stated, first, that he strongly favored colonization and, second, that free negro labor would not displace white labor or lower wages. See "Complete Works," Vol. II, p. 274. The American Freedmen's Inquiry Commission felt it necessary in 1863–1864 to declare that emancipation would not flood the North with negroes, but that those already in the North would go South. See "Preliminary and Final Reports," p. 102. This is the tone of much of the emancipation literature in 1862–1865.

degenerated but the negroes had thriven. Moreover, the North American negroes had become civilized; they had learned to work; they had our language, our religion, and many of our habits and customs, so that "no one should doubt their capacity to maintain a free and independent government under the guidance and patronage of our Republic." The sections of Central and South America considered by the committee were Yucatan, Cozumel, Venezuela, and Chiriqui (now Panama), a province in New Granada (Colombia) near Costa Rica. In New Granada large tracts of land had been granted to the Chiriqui Improvement Company, an American corporation, for colonization purposes.

Besides solving the problem of emancipation and establishing the future of the negro race, the committee believed that other benefits would result from tropical colonization. First, the governments of the Latin-American states would be more stable if under the supervision of the United States. Second, into the former slave states white immigrants would come, and free labor would thus be substituted for slave-labor, the evil economic effects of which might be observed by comparing Kentucky and Ohio, Massachusetts and South Carolina. Third, a considerable commerce would be carried on with these black colonies, populated by 4,000,000 negroes desirous of obtaining the manufactured goods of the United States, thus giving an advantage to American trade similar to that given to England by her colonies. And this commerce would be needed after the war, for many military industries would then cease and for years the trade with the ruined Southern states would be worth but little.

The views as to race relations exhibited in the above report were, and still are to a certain extent, the views of the average white man living in contact with negroes; they were not the views of the radical abolitionists nor of the great slaveholders. Had the Republican party openly advocated such a policy from 1856 to 1860, the non-slaveholding whites of the South would never have supported and forced the secession movement. The committee was composed of men from the border states. Besides White of Indiana, the chairman, Blair of Missouri, Lehman of

Pennsylvania, Fisher of Delaware, Whaley of West Virginia, Casey of Kentucky, Clemens of Tennessee, and Leary of Maryland were members. These were types of the border state men who supported the war, disliked the radical abolitionists, and who during the Reconstruction controversy sometimes became radical Democrats.[1]

To the Interior Department was intrusted the execution of the colonization laws referred to above. Secretary Smith employed a Rev. James Mitchell, who later proved to be very troublesome, as an "agent of emigration," and he set up an "emigration office." The public printer prepared for the use of the department 5000 copies of a publication called "The White and African Races," no copy of which can now be found. As soon as the appropriations for colonization were passed, numerous offers were made to the government by individuals and companies desirous of obtaining grants of money for transporting negroes, or by those who wanted to obtain laborers. The President of Guatemala offered several thousand acres of his own land for an experiment in colonization. To F. P. Blair, Jr., he sent the following proposition: each negro family should have free of rent a town lot of two to six acres and timber for fences and houses; farm lands would be rented to the negroes at reasonable rates or they would be hired for $12 to $14 a month; supplies would be furnished until they could produce their own.[2]

The American Colonization Society offered to transport the freedmen to Liberia and support them for six months for $100 each. Lincoln asked the authorities of this Society to submit a plan for carrying the blacks to Africa, and through them agents were sent to Liberia to investigate conditions with a view to settling a large colony on the St. John River. Lincoln and Secretary Smith finally accepted the proposition of the Society to transport negroes at $100 per head, but only a few hundred could be persuaded to go. Officers of the Society were authorized by the Secretary of

[1] For the report in full, see Ho. Rept. No. 148, 37th Cong., 2d Ses. See also Welles, "Diary," Vol. I, pp. 123, 150.

[2] "Pubs. So. Hist. Assn.," Nov., 1905.

the Interior to go to Fortress Monroe to procure negroes, but Secretary Stanton, who did not approve the deportation plan, refused to allow the officers to go within the military lines, so that their operations were confined to the District of Columbia.[1]

Numerous other propositions were made to the Interior Department. A New York association offered to transport negroes to San Domingo for $20 apiece, give to each fifty acres of land, and guarantee regular employment. Another New York company desired to sell its land in Costa Rica to the United States government. A Mr. Burr offered fifteen square miles in British Honduras for $75,000. Several offers also came from South America. The President of Hayti, thinking that some money could be made out of the business, sent an agent to the District of Columbia, who found sixty negroes willing to go. The Haytian government promised fifteen acres of land to each head of a family and six acres to each unmarried man, with guarantee of political rights. From 1861 to 1864 several independent colonies went to Hayti, but they were not assisted by the United States government.[2]

The Dutch minister offered to make a contract with the United States government to carry laborers to Surinam, but his proposition was refused. The officers of tramp steamers going to Australia wanted to take negroes from Hilton Head in South Carolina and Fernandina in Florida, but they were not allowed to do so. Both the Maryland and the Pennsylvania Colonization Societies applied for assistance, which was refused on the ground that only District of Columbia negroes and those freed by the confiscation acts could be transported at public expense. Eli Thayer, of Kansas emigration fame, planned to settle a negro colony in Florida, but it did not materialize. Hiram Ketchum, of the American West India Company of New York, was permitted to take negroes to San Domingo to raise cotton, and a like privilege was granted to the British Honduras Company.

To the Danish government permission seems to have been

[1] Sen. Ex. Doc. No. 55, 39th Cong., 1st Ses. A. Hansen, Consul to Liberia, to Doolittle, April 30, 1863, in "Pubs. So. Hist. Assn.," Nov., 1905.

[2] New York *Tribune*, Feb. 28, 1863. Welles, "Diary," Vol. I, pp. 150, 152.

granted to take volunteer laborers to the sugar plantations of St. Croix on the following terms: contracts to be made for one year, at the end of which time the laborers might change employers; nine hours of work a day was to be given; laborers were to have garden "patches"; and no whipping was to be allowed except upon sentence of an officer. Charles W. Kimbell, formerly United States consul to Guadaloupe, desired similar privileges and asked to be sent to Martinique and Guadaloupe to "make the necessary arrangements for the reception of sixty or eighty thousand emigrants free of all charges of transportation." In commenting upon these propositions, Secretary Smith said: "The act of April 16 [1862] may be regarded but as the commencement of a great national scheme which may ultimately relieve the United States of the surplus colored population." [1] None of the parties above mentioned except the American Colonization Society had the direct financial support of the United States government. They carried out some negroes — how many it is impossible to say, for no records were kept, but certainly not many hundred.

The United States government, on its own account, made two distinct efforts to settle negroes outside of the United States — one colony was to be planted in Central America and another on Isle à Vache, or Cow Island, near the southwest coast of Hayti. President Lincoln was most interested in the proposed Central American settlement and used his influence with Congress and with the leading free negroes to secure a colony there. He brought the matter up frequently in cabinet meetings, but most of the members were opposed.[2] On August 14, 1862, a delegation of negroes was invited to see Lincoln in regard to the proposed Central American settlement. Colonization was necessary, he told them plainly, because the blacks and whites were so different that each suffered from contact with the other; in this country the negroes were nowhere given equal rights, so let them go where they would

[1] Report from Interior Department on Colonization, in Sen. Ex. Doc. No. 55, 39th Cong., 1st Ses. Welles, "Diary," Vol. I, p. 152.

[2] See Nicolay and Hay, Vol. VI, p. 125; Chase's "Diary," July 21, 1862; Welles, "Diary," Vol. III, p. 438.

have equality; except for slavery there would have been no war, and further trouble might be expected if the races remained together; for a few leading negroes, living in comfort, to oppose colonization was selfish; they ought to sacrifice their own comfort for the good of the race; if the free negroes would go away, the whites would be willing to emancipate all; the more capable negroes ought to go first, not the newly freed; and Liberia was a good place, though at present he (Lincoln) was thinking of Central America, where the white people had no objection to the blacks and where the blacks could hope for equality.[1]

The border state Congressmen were assured by the President that if their states would emancipate the negroes, plenty of room could be found for them in Central America.[2] Doolittle and Pomeroy began active efforts to find negroes for a colony, and Pomeroy issued an address to the negroes of the United States advising them to accept the President's suggestions.[3] In a letter to Doolittle, to whom he gave credit for the passage of the colonization laws, Pomeroy gave his views on the matter. Others, he said, wanted only freedom for the blacks; he himself wanted "rights and enjoyments for them." "Can he secure them with the white man? — what are the teachings of two hundred and fifty years of history! Only this, that the free colored men of the free states are doomed to a life of servile labor . . . no hope of elevation. . . . I am for the negro's securing his rights and his nationality in the clime of his nativity on the soil of the tropics. . . . Nothing will restore this Union but a probable solution of the problem — what shall be the destiny of the colored race on this continent?" [4]

At first Lincoln was anxious to purchase territory for settlement in order that the United States government might exercise control over the negro colonies. But he was prevented from doing this in Central America by the Clayton-Bulwer treaty, which pro-

[1] Lincoln, Complete Works, Vol. II, p. 222.

[2] *Ibid.*, Vol. II, p. 205.

[3] Moore, "Rebellion Record," 1862, Vol. V, p. 65. Welles, "Diary," Vol. I, p. 123.

[4] "Pubs. So. Hist. Assn.," Nov., 1905.

hibited the United States from exercising control over any part of Central America. When A. W. Thompson of the Chiriqui Improvement Company, indorsed by Pomeroy, offered to colonize negroes in Chiriqui province, New Granada, Lincoln wished to accept the offer. Thompson claimed to have control of 2,000,000 acres on the Isthmus beyond the boundary of Central America, *i.e.* below Costa Rica, and thus not subject to the terms of the Clayton-Bulwer treaty. The land contained some coal deposits, and Thompson was anxious to secure a contract to supply the navy with coal.

Gideon Welles, Secretary of the Navy, wrote in his diary that on September 11, 1862, Senator Pomeroy's scheme for deporting negroes to Chiriqui came up for discussion in the President's cabinet. Welles was opposed to Thompson's project and he believed that Pomeroy had a financial interest in it. Under date of September 26, 1862, Welles recorded that at several recent cabinet meetings the subject of deportation had been discussed. In fact, he stated that it had been under discussion almost from the beginning of the administration. "The President was in earnest about the matter, wished to send the negroes out of the country. Smith, with the Thompsons, urged and stimulated him and they were as importunate with me as the President." Lincoln, Blair, and Smith favored the Chiriqui scheme, while Welles, who pronounced it "a fraud and a cheat," with Chase, Stanton, and Bates, opposed it, the latter only because Thompson's title to the land was disputed. On September 23, Lincoln asked each member of his cabinet to consider seriously the subject of acquiring territory to which the negroes might be deported. He "thought it essential to provide an asylum for a race which we had emancipated, but which could never be recognized or admitted to be our equals." Blair and Bates were in favor of compulsory deportation, while the other members of the cabinet believed that voluntary emigration would solve the problem.[1]

[1] After 1862 Welles makes no further mention of the subject of deportation and seems not to have known that Lincoln had already made a contract with Thompson. Welles, "Diary," Vol. I, pp. 123, 150, 162; Vol. III, p. 428.

Lincoln, however, had accepted the offer of Senator Pomeroy to supervise the work of colonization without charge, and a contract was made with Thompson on September 12, 1862, so framed as to safeguard the rights of the negroes. It contained the following provisions: Pomeroy or some other agent of the President was to investigate conditions and supervise the settlement; Thompson was to be responsible for the conduct of the colonists, and the United States was not to be compromised with New Granada; equality of citizenship was to be secured for the blacks; Thompson was to give land with good titles to the negroes — twenty acres to each adult male, forty acres to the head of a family with five children, and eighty acres to each head of family with more than five children; the United States would pay the costs of surveying the lands, and as fast as the land should be settled the government would pay $1 per acre for not more than 100,000 acres, thirty per cent of the payments to go to Thompson and seventy per cent to be used in making roads and wharves; furthermore, when Pomeroy should report that one settlement had been made, then the United States would advance Thompson $50,000 to aid in the development of coal mines, this sum to be repaid in coal for the use of the United States navy.

To Pomeroy was given control of the expedition and its finances. Secretary Smith instructed him that his expenses, but no salary, would be paid, that he was authorized to organize the colony and supervise it, and that if he found Chiriqui unsuited, he might take the negroes elsewhere, though not to Guatemala or Salvador, which had raised vigorous objections to negro colonization. The Treasury Department immediately placed $25,000 at the disposal of Pomeroy. During the month of September, 1862, he paid $14,000 of this amount to Thompson, and on April 4, 1864, he paid Thompson and W. E. Gaylord $8732.37, this being the remainder of the $25,000. He himself had expended about $2300. Secretary Seward sent circulars to the Central American states and to England, France, Denmark, and the Netherlands, — countries which had tropical colonies, — inviting negotiations and suggestions with respect to colonization. From the Central American

governments came prompt responses: they wanted no negro colonies which would be under any sort of control by the United States, and most of them objected to any kind of negro colonization. In October Pomeroy wrote to Doolittle: "I have 13,700 applicants. I have selected of them 500 for a pioneer party," but Seward, he said, had stopped the colonization on account of the attitude of the governments in Central America.[1]

Professor Joseph Henry of the Smithsonian Institution helped to put an end to the Chiriqui scheme by declaring that the coal on Thompson's property was worthless, and the Central American states not only protested against colonization, but denied the legality of Thompson's title to the land. So ended the attempt to settle negroes in Central America. What became of the $25,000 is not known. Pomeroy's accounts had not been settled in 1870. He seems to have lost Lincoln's confidence, and there is no evidence that many negroes were sent to Chiriqui.[2]

The colonization on Isle à Vache promised to be more successful than the Central American attempt. Of several propositions to carry negroes to Hayti, Lincoln preferred that of Bernard Kock (or Koch), who had leased Isle à Vache from the Haytian government for twenty years. The island was about twelve miles from Aux Cayes on the mainland, contained about one hundred square miles, had good soil for cotton culture, and was not subject to epidemics. On December 31, 1862, Lincoln, anxious to get the colonization experiment started, made a contract with Kock to carry 5000 negroes to his island for $50 per head. Kock was to secure from the Haytian government a guarantee of equal rights for the blacks, furnish them houses, gardens, and food, build churches and schools, and give them employment under white superintendents at wages ranging from $4 to $10 a month. Kock took this contract to New York and Boston capitalists and asked

[1] "Pubs. So. Hist. Assn.," Nov., 1905. Welles, "Diary," Vol. I, p. 162.

[2] On the Chiriqui enterprise see Nicolay and Hay, Lincoln, Vol. VI, pp. 356–359. Sen. Ex. Doc. No. 55, 39th Cong., 1st Ses. "Pubs. So. Hist. Assn.," Nov., 1905. Lincoln's Complete Works, Vol. II, p. 490. Ho. Ex. Doc. Nos. 222, 227, 41st Cong., 2d Ses. Welles, "Diary," Vol. I, pp. 123, 150, 162; Vol. III, p. 428. Diplomatic Correspondence, 1862–1864.

for financial support. He proposed to carry 500 negroes out at once, and to raise in 1863 a thousand bales of sea island cotton which would be worth at the prices then prevailing nearly a million dollars. The outlay, he thought, need not be more than $70,000. The capital was promised, several hundred negroes were ready to go, a ship was chartered, and supplies collected at Fortress Monroe. But the opponents of negro colonization now asserted that Kock was in league with Admiral Semmes to abduct and reënslave the negroes and that he was of doubtful character, consequently Lincoln canceled the contract.[1]

Certain New York capitalists, Jerome, Forbes, and Tuckerman, who had subscribed to the Kock company, were so impressed with the scheme that they purchased the Haytian lease and then sought to obtain a contract from the government similar to that made with Kock. Usher, who had succeeded Smith as Secretary of the Interior, was assured that the contractors were reliable men, and the contract was made by him with Forbes and Tuckerman on April 6, 1863. By this agreement the negroes were to be looked after for five years by the contractors, and upon proof of successful settlement the United States was to pay $50 per head for each negro colonist. The contractors intended to send Kock out as governor, and the money was furnished by Jerome, who, for some reason, was in bad repute with the government. But of the connection between the two men and the contractors the government authorities knew nothing at the time. Tuckerman, in 1886, asserted that Lincoln pressed the contract upon Forbes and himself, urged that they "as a personal favor" accept it and help him carry out the plan which he had so much at heart. Unwillingly, he says, they agreed to ship the first 500 negroes, for whom provision had already been made.[2]

An expedition was started at once for Isle à Vache. The *Ocean Ranger* left Fortress Monroe with about 500 negroes, "the poor refugees," according to Tuckerman, "flocking on board,

[1] Nicolay and Hay, Lincoln, Vol. VI, p. 359. *Magazine of American History*, Vol. XVI, p. 329.

[2] *Magazine of American History*, Vol. XVI, p. 330.

shouting hallelujahs and in some instances falling on their knees in thanksgiving for the promised blessings in store for them." Kock, the governor or manager, with several white superintendents, accompanied the negroes to the island. On the voyage the negroes were not well cared for, smallpox broke out, and twenty or thirty persons died, among them several of the whites; the blacks had to purchase drinking water from the ship's steward, and the food was bad. They were landed during the rainy season, but found no houses and but little lumber out of which to construct them, and were forced to build rude huts for shelter. Kock brought no supplies, no seeds, and no implements, but, being charged with the discipline of the colony, he brought handcuffs, leg chains, and stocks. He proved to be despotic and incompetent, and some of the negroes were maimed for life by his harsh discipline. He managed to get all the coin money that the negroes had, and paid them for their work only in paper money which he had printed. The exasperated blacks finally drove him off. When his employers, who cared only for the promised one thousand bales of cotton, heard of this, they stopped the meager supplies which they had been sending, and left the negroes to shift for themselves. Tuckerman's account (1886) does not agree with the above, which is based on the records of the Interior Department. He says that "no sooner were the survivors landed and the necessity for manual labor on their part apparent than the lowest characteristics of the negro — indolence, discontent, insubordination, and finally revolt — prevailed. Mistaking liberty for license, they refused to work and raised preposterous demands for luxuries to which they were wholly unaccustomed during servitude." He further states that discontent was fostered by the natives, who wished the colonists to desert and become Haytian subjects. This "we refused to allow the freedmen to do." [1]

To Lincoln the failure of this enterprise was a bitter disappointment. Soon after the *Ocean Ranger* had sailed for Hayti the State Department learned that Bernard Kock was the prime mover in the expedition; and that Leonard Jerome had furnished

[1] *Magazine of American History*, Vol. XVI, p. 329.

the capital. Secretary Usher at once informed Tuckerman and Forbes that they might count upon no more contracts, for the connection of Kock and Jerome with the undertaking was regarded as an act of bad faith to the United States. From Confederate newspapers Lincoln learned that the negroes had been neglected, and he caused remonstrances to be made to the contractors. Jerome now came forward and avowed his intention to expend no more money for the negroes. Usher tried to hold Tuckerman and Forbes to their contract, but soon found that they were acting only for Jerome. He charged Tuckerman and Forbes with acting in bad faith throughout the transaction and informed them that no money would be paid until the contract was carried out. To Jerome he wrote: "Candor induces me to inform you that when your name was proposed as one of the contracting parties by Mr. Tuckerman I declined to have it inserted [in the contract] because I did not think that your avocation and habits of life would induce you to persevere in the enterprise if it should prove disastrous and unprofitable."

Reports of bad conditions in the colony continued to come in, and Lincoln was troubled by the accounts of the sufferings of the negroes.[1] Finally D. C. Donahue of Greencastle, Indiana, was sent in October, 1863, to investigate conditions on the island. In his report to the Secretary of the Interior, he described the situation of the blacks as deplorable and their treatment by Kock and his men as inhuman. Instead of preparing to care for the negroes for five years, as they had agreed, the contractors had already ceased to furnish supplies.[2] Donahue found 378 negroes out of about 500 who had been carried from Fortress Monroe, and for several months supplied them at the expense of the United States government. He thought that the principal cause of the failure

[1] See Eaton's "Grant, Lincoln and the Freedmen," p. 91.

[2] On the other hand, Tuckerman stated in 1886: "Shiploads of provisions and other necessities were forwarded and instructions of the most concise and liberal nature were given for the maintenance and support of the families until they could be returned to the United States under proper protection. All this involved great delay and . . . eight months of anxiety and expense on our part." The loss, he said, was about $90,000, which Congress refused to pay. See *Magazine of American History*, Vol. XVI, pp. 329–332.

was mismanagement, for the soil was good and cotton could be profitably raised. Then, too, the Haytians were opposed to the colony. Kock had not received permission to colonize the island, nor had anything been done to secure citizenship for the colonists. Another difficulty in the way of successful colonization lay in the fact that the American blacks were quite different from the Haytians in language, customs, religion, and ideas of government. The negroes wanted to return to the United States, and the Haytians were anxious for them to go. It was Donahue's opinion that a successful colony could not then be developed in Hayti.[1]

Reluctantly Lincoln abandoned his second serious attempt at colonizing the blacks, and on February 8, 1864, he requested Stanton to send a ship to bring the Cow Island colonists back to the refugee camps in the District of Columbia.[2] For some reason practically all of the colonization work had been done more or less in secrecy. When the *Ocean Ranger* took the five hundred negroes from Fortress Monroe to Hayti there were few who knew what was being done, and hence there arose the widespread rumor that the negroes were simply kidnapped and turned over to the Confederates. Even more secret was the bringing back of the colonists. The ship *Maria L. Day* was chartered at New York and provisioned as for a voyage to Aspinwall to take on five hundred United States troops returning from California. Captain Edward L. Hartz was placed in charge, with directions to proceed toward Aspinwall and with sealed orders which he was to open when he reached 20° north latitude.[3] He found 293 negroes on the island under Donahue's care; the others had died or wandered away. Clothes were distributed to the destitute, and on March 4, 1864, the return trip was begun. On March 20 the colonists were landed at Alexandria, Virginia, and the venture was at an end.[4] For several years the contractors made efforts to collect their

[1] Sen. Ex. Doc. No. 55, 39th Cong., 1st Ses. Nicolay and Hay, Vol. VI, p. 359.

[2] Off. Recs., Ser. III, Vol. IV, p. 75. Lincoln's Complete Works, Vol. II, p. 477.

[3] Off. Recs., Ser. III, Vol. IV, p. 76.

[4] Nicolay and Hay, Vol. VI, p. 359. Welles, "Diary," Vol. III, p. 428. *Magazine of American History*, Oct., 1886.

expenses from the United States government but did not succeed.[1]

Though Lincoln still believed in the necessity for colonization, the failure of the Cow Island colony prejudiced the blacks against such attempts and strengthened the efforts of those whites who now opposed colonization and favored the incorporation of the negroes into the American population. In December, 1862, Lincoln had stated in his message that the failure of the Central American scheme had disappointed many negroes who wanted to leave the United States, and that only two places were left to which they might go — Liberia and Hayti — but that they were unwilling to go to these places.[2] Now, after the failure of the Kock expedition, Hayti was out of the question.

The Secretary of the Interior, in December, 1863, reported that the negroes were no longer willing to leave the United States, and that they were needed in the army. For these reasons he thought that they should not be forcibly deported. Referring to some attempts to settle negroes in the North, he declared that "much prejudice has been manifested throughout most of the free states in regard to the introduction of colored persons," yet he thought it might be possible to use them in constructing the Pacific railways, where labor was needed and where there would be no objection to them.[3]

In Congress opinion was turning against colonization, and in March, 1864, Senator Wilkinson introduced a bill to repeal all measures making appropriations for deportation of negroes.[4] He declared that these attempts had been "extremest folly" and that the results had been "hazardous and disgraceful."[5] On July 2, 1864, Lincoln signed an act repealing all the laws relating to negro colonization.[6]

[1] Sen. Ex. Doc. No. 55, 39th Cong., 1st Ses. *Magazine of American History*, Vol. XVI, p. 332.

[2] Lincoln, "Complete Works," Vol. II, p. 262.

[3] J. P. Usher, Report of Sec. of Interior, Dec. 5, 1863.

[4] Cong. Globe, March 15, 1864, p. 1108.

[5] Cong. Globe, May 11, 1864, p. 2218.

[6] Cong. Globe, 38 Cong., 1st Ses., pt. 4, App., p. 249.

The Interior Department gradually discontinued its "emigration office." In May, 1863, Usher attempted to get rid of Rev. James Mitchell, whom Lincoln had appointed as "agent of emigration," but Mitchell continued in office for a year longer. Usher complained that Mitchell, without permission, corresponded in the name of the department on emigration matters. He was forbidden to do this, and the records of his office were called for. These he refused to give up, and he was discharged at the end of June, 1864. For months he besieged the Secretary of the Interior for an extra year's salary, but finally dropped out of the records in 1865.[1] When, in 1870, the House called for the accounts of the emigration agents, it was found that $38,329.93 had been expended by them. Of this $25,000 had been paid to Senator Pomeroy, and the remainder had been expended by other agents. The American Colonization Society returned in 1864 the $25,000 that it had received in 1863.[2]

After the failure of foreign colonization the advocates of separation of the races suggested that sections of the South be set apart for the negroes. Some thought that South Carolina and Georgia should be given them;[3] others that the lower Mississippi valley should be cleared of whites and divided among the ex-slaves; a third proposition was that in each Southern state a section should be set apart for the blacks. Senator Lane of Kansas strongly advocated a bill to set apart for the blacks that part of Texas bounded by the Rio Grande, the Gulf, the Colorado River of Texas, and the Llano Estacado. Lane thought that the negroes should be forced to go to this region at their own expense. The United States might use, he said, the $600,000 already appropriated to purchase titles, might carry colored troops out there and discharge them, and then send their families to them. Thus would be formed the nucleus of a negro state. He stated the following reasons for favoring colonization: the North was opposed to the negro as a laborer and wanted no mixture of races;

[1] Sen. Ex. Doc. No. 55, 39th Cong., 1st Ses., pp. 45–47.
[2] Ho. Ex. Doc. No. 222, 41st Cong., 2d Ses.
[3] Governor Cox of Ohio supported this plan. See Welles, "Diary," Vol. II, p. 352.

in the South the whites would hate the ex-slaves whom they had so mistreated; the sentiment in favor of negro rights, now so strong, would in time die out and the negro would be left with no chance for social or political equality; at the end of the war there would be a surplus of labor, due to the discontinuance of war industries and to the discharge of soldiers; it would be impossible to give to the negroes the lands of their masters and to secure quiet titles, for even if the Southern men were killed, the women and children would remain, and, after amnesty, would hold the lands. "I had hoped," he said, "the time should come when the foot prints of the white man should not be found on the soil of South Carolina," but in this matter the best interest of the blacks must be considered. Lane's bill was favorably reported but did not become a law.[1]

President Lincoln continued to believe that deportation was the only permanent solution of the problem. General B. F. Butler, who had had considerable experience in dealing with negroes in Virginia and Louisiana, was called into consultation by Lincoln soon after the Hampton Roads Conference. Butler says that Lincoln asked him to report upon the feasibility of using the United States navy, which would soon be free from war service, to deport the negroes. The President told Butler that he feared more trouble between the North and the South "unless we can get rid of the negroes," especially the negro soldiers, who, he thought, were certain to give trouble; that the Southern whites would be disarmed at the end of the war while the negroes either had arms or could easily get them from the North; and that a race war might result. The question of the colored troops, Lincoln said, troubled him exceedingly. He believed that all of them should be deported to some fertile country of the tropics. Butler, a few days afterward, made an oral report in which he made the famous assertion which is still quoted: that all the vessels in America could not carry away the blacks as fast as negro babies were born. However, in order to dispose

[1] Cong. Globe, Jan. 13, 1864, pp. 145, 238; Feb. 4, p. 480; Feb. 11, p. 586; Feb. 17, p. 672. Welles, "Diary," Vol. II, p. 352.

of the negro troops, Butler proposed that he take them to Panama and use them in digging the canal. One-third of them could labor on the canal, one-third could raise food, and the other one-third could provide shelter, etc. The wives and children of the soldiers could be sent to them. Butler states that Lincoln was impressed by this proposition and asked him to confer with Seward to see if foreign complications were to be feared. Butler wrote out a report which he carried to Seward, who, knowing Lincoln's interest in the problem of the negro troops, promised to examine the matter carefully. But the murder of Lincoln and the wounding of Seward put an end to this plan.[1]

While few practical attempts were made to separate the races, yet much opinion in the North was in favor of it, until the end of the war. Especially was this true of the army, which to the last cared little for the negro *per se*. This feeling that the blacks should be set apart is shown in the regulations made from 1862 to 1865 by officials controlling the blacks in the Mississippi valley and on the Atlantic coast, which almost invariably prohibited whites from entering the black communities. Sherman in his famous Field Order No. 15, setting aside the coasts of Georgia and South Carolina for the negroes, directed that no whites were to be allowed to live in the negro districts.[2]

Since the close of the war there has been much discussion of deportation and colonization, but very little effort has been made to colonize. The American Colonization Society kept up its work after the war, but could get only a few hundred negroes a year. Bishop Turner of the African Methodist Episcopal Church was for years the leading exponent of the colonization idea, and while his views have been indorsed in theory by many of his race, relatively few of them have gone back to Africa. After the failure of the "Exodus" movement of 1879–1882 to Kansas there was strong sentiment among the negroes in favor of "separate national existence." The "United Transatlantic Society," organized during the '80's by one of the "Exodus" leaders, reflected

[1] This is Butler's statement. See "Butler's Book," pp. 903–907.
[2] See Fleming, "Doc. Hist. Recon.," Vol. I, p. 350.

this feeling but had slight results.[1] One thing that has prejudiced the negroes against going to Liberia or to other proposed places of settlement is the fact that many swindlers have taken advantage of the various colonization schemes to defraud the negroes by collecting passage money from them and giving them fraudulent tickets.[2] Negroes who went to Liberia have come back with bad reports of the country. The negro and the Southern white, each in a way, favor colonization. Some negroes would be glad to go if they were sure of doing as well in Africa as in the United States, while every white man would be glad to have the entire black race deported — except his own laborers. Any organized emigration scheme invariably meets more or less forcible resistance from the employers of black labor.

[1] See *American Journal of Sociology*, July 1909, p. 77.

[2] The latest of these schemes was reported in January and February, 1914. See *Literary Digest*, March 21, 1914.

II

THE LITERARY MOVEMENT FOR SECESSION

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II

THE LITERARY MOVEMENT FOR SECESSION

"The South alone should govern the South, and African slavery should be controlled by those only who are friendly to it." This, the title of a pamphlet of 1860 by John Townsend, a veteran South Carolina planter, was the law and the gospel among the whole generation of ante-bellum Southerners; and the conversion of its "should" into "will" was the crucial task of statesmen and people. Party regularity, the annexation of Texas, a sectional phalanx, Congressional compromises, squatter sovereignty, the Dred Scott principle, the right of secession, and many other doctrines and policies had their several champions among the would-be saviors of the South; and the public weighed these devices not so much to ascertain their intrinsic merits as to determine their value for the main purpose at hand. This is only to say that the Southerners were a practical people dealing with a vital problem in a practical way. Yet it needs to be said and to be demonstrated that the right and expediency of state secession and all kindred questions were wholly ancillary to the problem whether and how the South should strike for national independence. State sovereignty was an obvious gospel for politicians of the minority section to preach, for minority politicians had harped upon it from the beginning of American constitutional time, and members of the Congressional fraternity have ever been prone to walk in trodden paths. The official vindicators of the South in retrospection after the war, such as Davis and Stephens, naturally continued to stress the strictly constitutional issue and made it the authoritative Southern tradition that the war was primarily for state rights. But this gloss was relatively little used by the private citizens of the ante-bellum South whose extant

expressions, chiefly in pamphlet form, are probably the truest index to the prevalent thought of the community.

The white man's burden has been self-assumed, but it is a burden all the same; and those who have denied its reality have not lessened its weight. As concerns the negro race, this burden was undertaken with nonchalance by the whole civilized world in the sixteenth and seventeenth centuries on behalf of its American colonies. The later eighteenth century brought forth a philosophy which gainsaid race differences, and the nineteenth put the principle into practice. But the men who confronted the actual conditions resisted the theories which their daily experience belied. The racial duality of the South as contrasted with the homogeneity of the North had promoted a consciousness of difference in colonial times. This was increased by the struggles over the tariff; it was of course brought to a culmination by the wrangles over negro slavery. The desire for Southern separate nationality had a virtually continuous growth, from partial to full consciousness, from private to public expression, from tenure by the few to adoption by the many. After occasional preliminary utterances, such as Rhett's in 1838,[1] the serious consideration of Southern independence as a preventive of apprehended ills arose in response to New England's opposition to Texan annexation. Citizens in widely scattered localities wrote the Southern leaders at Washington in alarm at the indications and in advocacy of pushing the issue, even to disunion if need be;[2] and a few pamphlets were issued in the same strain. Party pressure, however, particularly among Democrats outside of South Carolina, hampered the campaign for Southern unity; and the accomplishment of Texan annexation soon relieved the situation for the time being.

By 1846, nevertheless, the sectional tension was such that small

[1] *Niles's Register*, Vol. LIII, p. 356 ff.

[2] Numerous letters of this tone in 1844 and the following years are published in the Calhoun Correspondence, Jameson ed., American Historical Association Report for 1899, Vol. II, and in the Toombs, Stephens, and Cobb Correspondence, Phillips ed., *ibid.* for 1911, Vol. II. Still others are preserved in the Hammond, Crittenden, and Johnson MS. collections in the Library of Congress.

events might be pregnant of great consequences. A family quarrel among the Democrats over the "all of Oregon" question [1] led to the introduction of the Wilmot Proviso, which raised an issue that would not down. The South was at once aroused and was kept so by the repeated passage of the Proviso by the lower house of Congress. The belligerent tone of a pamphlet written under the name "Georgia" struck such a responsive chord in popular thought that it ran through eight editions in the years from 1847 to 1849.[2] Abolitionism, as exemplified in the Proviso, the latest stroke of the Northern enemies of the South, said the author, "will produce a dissolution of the Union. This is inevitable unless God interposes to arrest its progress; for it is manifest that this, or destruction, is the only alternative left to the South. She has tried to arrest its progress by threats (poor expedients), concessions and compromises; and they have produced no other effect than to embolden aggression." The South, he said, would be ready for war, if war should be required for independence; and the quietude of the slaves on the one hand and English intolerance of a cotton blockade on the other would insure Southern victory on the battle field. He challenged Massachusetts to precipitate the issue: "Now that you are strong, be a bold and high-minded enemy. If you are determined to bring us to the bayonet, come manfully up to the mark at once — declare the connection between you and the slaveholder at an end — do this by some undisguised act which shall put him in an attitude of defence. . . . Mr. Wilmot's movement encourages me to hope for this much at least. . . . His achievement is a grateful presage to us that abolitionism is soon to assume a more tangible form. It will be a relief to us to be done with the everlasting irritants which you are applying to us, to know . . . that your next visit is to be decisive of our fate for weal or for woe." After reviewing abolitionist expressions and

[1] C. E. Persinger, "The Bargain of 1844 as the Origin of the Wilmot Proviso." American Historical Association Report for 1911, I, 187–195.

[2] "A voice from the South: compromising Letters from Georgia to Massachusetts, and to the Southern States." Baltimore, 1847. Eighth edition. Baltimore, 1849. The letters were first published in the *Western Continent*, of Baltimore, which aspired to be a popular Southern family newspaper.

tracing the progress of their movement, he asked, "In God's name how have you made proselytes to this system of warfare?" Though the secret of their success was beyond his understanding, he conceded the fact of their power, and he proposed that the alienated sections separate in peace. But he had little expectation that Massachusetts would live up to the disunion expressions of her anti-slavery society and her legislature. "Georgia" at length took leave of Massachusetts "until we meet at Philippi," and turned to address a brief argument to the South, advocating the establishment of military schools and of a direct trade with Europe "to anticipate the state of our commerce in case we shall be driven out of the Union," and the creation of machinery to consolidate Southern opinion against the day of crisis.

In this period constituents were bombarding their representatives with letters; the legislature of each Southern state adopted vigorous resolutions against the Proviso; and Calhoun, prodded by his colleagues and compatriots, launched a project for a Southern phalanx in Congress, regardless of previous party affiliations.[1] The repulse of Calhoun's overtures by the Southern Whigs prevented the organization of the block; and the successive rejections of the Proviso by the Senate postponed the culmination until 1850.

The North was almost as much aroused in favor of the Proviso as the South was against it. The extreme partisans in each section, of course, played into the hands of the extremists of the other, and enabled them to bring moderate men to their way of thinking. At the South, numerous thoughtful citizens were becoming persuaded that in independence lay the only safeguard, and among them in particular a scattered group of keen students in private or semi-private life who now took their pens in hand, some to write letters to their representatives, some to send communications to the newspapers, and some to issue pamphlets or magazine articles whether under pseudonyms or under their own names.

Perhaps the most striking of all the private letters was that of

[1] U. B. Phillips, "Life of Robert Toombs," pp. 59–62.

Henry L. Benning to Howell Cobb, July 1, 1849. The writer, a prominent lawyer of Columbus, Georgia, afterwards a brigadier-general in the Confederate army, had been, during the forties, a staunch Democrat; but now after presenting an analysis of the sectional situation and prophesying the growth of Northern abolitionism to overwhelming power unless checked by some stringent means, he proposed not only the prompt repudiation of party attachments as mischievous to the South, but the speedy erection of a compact Southern nation. "I think, then, first," he wrote, "that the only safety of the South from abolition universal is to be found in an early dissolution of the Union. . . . I think that as a remedy for the South, dissolution is not enough, and a Southern Confederacy not enough. The latter would not stop the process by which some states, Virginia for example, are becoming free, viz. by ridding themselves of their slaves; and therefore we should in time with a confederacy again have a North and a South. The only thing that will do when tried every way is a consolidated republic formed of the Southern states. That will put slavery under the control of those most interested in it, and nothing else will; and until that is done nothing is done." [1]

The Charleston *Mercury* served as a clipping exchange for fire-eating newspaper editorials and communications, while the *Southern Quarterly Review* and to some extent the *Southern Literary Messenger* and *DeBow's Review* opened their pages to the more formal essays. In February, 1850, D. K. Whitaker of Charleston issued a prospectus for a monthly periodical to be published at that place, to be entitled *The Rights of the South* and "devoted to the defence of Southern rights and the cause of letters at the South." But apparently subscriptions enough were not received to justify its launching. The most salient essays, along with a certain number of speeches, were either printed as pamphlets in the first instance or promptly reissued in pamphlet form. Several Southern Rights Associations were established in various quarters which adopted the promotion of pamphleteering as one of their chief activities.

[1] "Toombs, Stephens and Cobb Correspondence," p. 171.

The most vigorous of these, as was to be expected, had its headquarters at Charleston.

As long as Calhoun lived, his mighty championship exerted a subduing influence upon Southerners in private life. He saw the sectional issue as a strife of sentiment at the North against interest at the South, and not as between interest and interest,[1] and he was most reluctant to believe the conflict irrepressible. In his last years he wavered between the hope that appeals would bring Northern magnanimity and the fear that Southern resistance would be imperative; and many of his compatriots wavered with him. After Calhoun's death the progress toward fruition of his project for a Southern convention still persuaded the advocates of independence to refrain from open agitation. Even after the Nashville Convention in its first session had proved of little effect, by reason partly of Whig opposition and partly of border-state indifference, the continuance of the Congressional debate upon the compromise bills gave more stimulus to publication by those who would ravel the knot than to those who would cut it. In July, it is true, an anonymous writer at Washington, under the pen-name Randolph of Roanoke, wrote a pamphlet elaborating the hindrance of fugitive slave rendition as a cardinal grievance and preaching disunion from that text. "Any other people under the sun," said he, "victimized and aggrieved as the South has been in the Union's name, would have shivered it to atoms from the might which slumbers in her soldierly arm! Had the North loved the Union as the South does, she would never have imperilled it by degrading her with trials so wounding to her honor and so onerous to be borne with. . . . Will the South bear longer with her wrongs and with more from her oppressors? God of his forecast knows! She may; but we bless Providence and trust she may not."[2] On the other hand, under date of August 17, L. C. Gaines of Ocala, Florida, circularized the federal and state executives and the presiding officers of Congress with a plan for removing the slavery problem from Congressional

[1] Calhoun, "Works," IV, 385 ff.

[2] "The Randolph Epistles," N.p., n.d.

control and intrusting the solution to a plenipotentiary commission of two delegates from each state.[1]

When Congress adjourned in September after enacting the celebrated series of laws which delimited the area of Texas, organized the territories of New Mexico and Utah with indeterminate provisions as to slavery, admitted California as a state with a no-slavery constitution, prohibited the slave-trade in the District of Columbia, and charged federal officers with the interstate rendition of fugitive slaves, the people faced the question of accepting or rejecting the compromise as a settlement of the general issue. In the border states indorsement was eager and unmistakable. Beverley Tucker, for example, found among his Virginia neighbors little echo of the defiance in his speech at Nashville; and the local Southern Rights Association thought proper to advocate merely an excise tax on Northern goods as a slight retaliation for Northern aggressions.[2] In most of the Lower South, too, the vehement preaching of the finality of the compromise, especially by the Congressmen upon their return home from the session, put its opponents on the defensive and made even Yancey cloak his advocacy of independence. In Mississippi, it is true, the overt question of union or disunion was fought upon the stump. But it was in South Carolina, where political consciousness was unusually alert and where the reading habit was perhaps the most general, that pamphleteering was the most vigorous and illuminating. None but the specially significant of these expressions may here be noted.

The most elaborate of the arguments for independence was a pamphlet of 152 pages,[3] written apparently in October, 1850, by Edward B. Bryan of South Carolina, who in his introduction confessed his obscurity, and who is in fact wholly unknown to fame. He sketched the history of slavery from ancient times and praised

[1] Lewis Clark Gaines, "A Sure Plan of Compromise Presented to Congress" (caption).

[2] "Petition of the Central Southern Rights Association of Va., and Accompanying Documents." Richmond, 1851.

[3] Edward B. Bryan, "The Rightful Remedy. Addressed to Slaveholders of the South." Charleston, published for the Southern Rights Association, 1850.

it as a civilizing and tranquilizing agency; he pointed to the sufferings of the world's wage-earning poor and maintained that slavery as established in the South, although it had evils associated with it which he acknowledged but did not specify, was a relative good for both whites and blacks; he asserted the paramountcy of cotton in peace and war, erroneously attributing the whole production of the crop to slave labor; he censured the agitation against slavery and said that "unless some miraculous interposition of Providence creates a thorough revolution in the political affairs of this government, it must lead to a separation of the South from the North, or a total subjugation of the former to the latter, at some future time." He contended that the South was now at the height of its ability to vindicate by arms, if need be, a stroke for independence; and he advocated prompt secession by the separate states under a plan of concert which he hoped would be framed by the Nashville Convention when it should reconvene at the middle of November. He contemplated negotiations with the United States after secession with a view to reëntrance on better terms, but he expected little result therefrom and thought that, "after the division is effected the slaveholding states would without doubt form a republic similar to the present, and the constitution of that republic would be essentially a copy of the constitution of the present republic," with the addition of a few clauses securing the slaveholding interest. His argument, unusually cogent as it was, contained occasional expressions which anticipated the thought and the developments of the ensuing decade. The most striking of these was the house-divided argument: "Our system of government rests on the 'broad basis of the people.' . . . The people are not homogeneous, they do not assimilate; they are opposed in interests, at variance in opinions — they are at war, inevitable, unavoidable war. . . . The cement is broken, the house is divided against itself. It must fall." [1] Bryan also anticipated Loria and other present-day economists by saying, "The moment free labor becomes cheapest in any

[1] Page 111.

country, slavery is there already at an end." But he pressed his point too far in asserting "that slavery can only be abolished by being undersold." [1]

Another October pamphlet, far briefer than Bryan's but no less pointed, was by William Henry Trescott, a young Charlestonian then about to begin his long career in the federal diplomatic service. His essay, entitled "The Position and Course of the South," [2] began by asserting that antagonism of interests afforded the key to modern politics in general, and that the conflict of sectional interests, portentous of mortal strife, was the distinguishing feature in the United States. The contrast in the relations of labor and capital North and South, he thought, made the two communities essentially incompatible. Even as to foreign relations the conflict prevailed, and here the key was the cotton trade. While the North wanted to drain the profits of Southern agriculture by excluding European manufactures, the South needed uniform commercial friendship and freedom between herself and all cotton-consuming peoples, including the North. Furthermore, the proneness of the North to thrust her social propaganda into the domestic affairs of other nations invited retaliation from them, whereas the South desired merely to live and let live. But if the two sections were erected as separate nations, the self-interest of each would insure the fullest amity between them. A war of conquest by the North, even if successful, would not yield results worth what it would cost; and the South could have no possible interest in aggression. Treating more directly of the current issue, and alluding particularly to the admission of California, he said: "The legislation of the present Congress has effected a political revolution. It has destroyed old relations and rejected established compromises. Basing its action upon a principle recognized only by a part of its constituency, the government in becoming the exponent of one class becomes necessarily also the enemy of the other, . . . and forces upon half the commonwealth the bitter alternative of becoming subjects or rebels." The North-and-South differentiation,

[1] Page 101.

[2] Charleston, 1850.

he said, had begun with the planting of Jamestown and Plymouth, and the divergence had steadily increased through the dissimilarity of principles and experiences. "That this strife has not yet developed itself in fierce commotion, is owing to circumstances which are fast disappearing; that it must come the whole history of Northern politics declares, and society is busy preparing the elements generated between the two extremes." The government was now about to become as surely Northern in policy as if the South had no votes. "The experience of the last twenty years, from General Jackson downwards, has proved that the President, as has been admirably said, 'is a demagogue by position,' that the house of representatives represents popular passions and interests; that in the senate alone is to be found the conservative element of government. Now the representative majority is Northern, the presidential electoral majority is Northern, and since the admission of California the senatorial majority is Northern. Can a multiplication table work out results more certain?" He thought that future prospects ought to be considered even more than current issues, and that for the future the cause in the Union was hopeless. "The only safety for the South is the establishment of a political center within itself; in simpler words, the formation of an independent nation."

In November the aged Langdon Cheves emerged from his long plantation retirement and, as a delegate from South Carolina to the second session of the Nashville Convention, made a speech which was the only salient occurrence at that moribund gathering. The real objects of those who now resist the extension of slavery, said he, "are no less than the entire and speedy abolition of slavery. Now let any man contemplate the character and extent of this proposition. . . . Some idea of it may be gained by recalling the sufferings, the massacre and the banishment, in poverty and misery, of the white proprietors of Hayti, and the present rule of his sable majesty, the Emperor Faustin the First. . . . Nor let those of the South who have no direct interest in slave property hug to their bosoms the sweet unction that they can evade the common fate. Every Southern interest must perish with

the slave institution. Houses, lands, stocks, moneys at interest, must all be submitted to this fate. These horrors have nothing appalling to the minds of the Freesoilers. . . . Nor can they limit their operations; for, as John Randolph pithily said, fanaticism has no stopping place." He censured the encroachments of the federal government: "The direct constitutional power granted to the Union, except in regulation of commerce and the management of our foreign relations, we have seen, was very small, but is now overwhelming. It has prostrated what was intended as the great safeguard of the people — the power of the independent states." The constitution he pronounced but a dead formality, since it no longer safeguarded the liberty and security of a free people. The recent enactments of Congress were a culminating offense: "In nine months, in one session of Congress, by a great *coup d'état*, our constitution has been completely and forever subverted. Instead of a well-balanced government, all power is vested in one section of the country which is in bitter hostility with the other. And this is the glorious Union which we are to support, for whose eternal duration we are to pray, and before which the once proud Southron ought to bow down. He ought to perish rather!" "But suppose that we shall be roused, and that we shall act like freemen, . . . what is the remedy? I answer: secession — united secession of the slaveholding states or a large number of them. Nothing else will be wise — nothing else will be practicable. The Rubicon is passed — the Union is already dissolved!" Cheves mentioned the subject of treason only to scout it: "Anyone who has advanced beyond the hornbook of national politics knows that every people, or any great body of people whether the whole of a nation or not, with arms in their hands are not to be called traitors, or treated as such." As to military prospects, he thought the South fully competent for success in a war for independence. Foreign nations, he thought, would not suffer a blockade of the cotton ports. And to the abolitionist expectations that "their friends, the slaves, will fight their battles," he replied, "Will they? They will really add to our strength. They will build our fortifications; they will till

our fields while their masters are in arms; and they could be made, without hazard to our safety, even to aid us in battle, were aid wanted; but it will not be." He, like all his school, urged speedy action: "Our opponents have been emboldened to act as they have done, by a belief that we cannot be kicked into national resistance. — No! If we cannot resist as a nation, we are subdued as a nation. In the meantime, we shall do nothing while the enemy will be providing for our subjugation. The delay will be dangerous. I say, with Lord Bacon, 'It were better to meet some dangers half way, though they come nothing near, than to keep too long a watch upon their approaches; for if a man watch too long, it is odds he will fall asleep.'" "The South can hardly overrate its strength when it shall be united. It is no boast to say you are equal to your enemy in arms, and you have to give or withhold what will secure alliances in war or peace, when you shall desire either. — Unite, and you will scatter your enemies as the autumn winds do fallen leaves. . . . Unite, and you shall form one of the most splendid empires on which the sun ever shone, of the most homogeneous population, all of the same blood and lineage, a soil the most fruitful, and a climate the most lovely. But submit — submit! The very sound curdles the blood in my veins. But, O! great God, unite us, and a tale of submission shall never be told!" [1]

By this time the official machinery of several of the cotton-belt states had been set in motion. Governor Towns of Georgia, under previous authorization by the legislature, ordered the election of delegates to a constituent convention of the state; and Governors Quitman of Mississippi and Seabrook of South Carolina called their legislatures together in special session and sent rousing messages to them when assembled, denouncing the compromise and recommending among other things the call of conventions and the provision of military funds. If Southern grievances are not promptly redressed by Congress, Quitman said, "I do not

[1] "Speech of the Hon. Langdon Cheves, delivered before the delegates of the Nashville Convention, on Friday, November 13, 1850." Printed by order of the House of Representatives. Columbia, S.C., 1850.

hesitate to express my decided opinion that the only effectual remedy to evils which must continue to grow from year to year is to be found in the prompt and peaceable secession of the aggrieved states." [1] Seabrook said, "The bond of union having been deliberately mutilated by a majority of the contracting parties, the minority have no longer any security for life, liberty and property. The time, then, has arrived to resume the exercise of the powers of self-protection which in the hour of unsuspecting confidence we surrendered to foreign hands. We must reorganize our political system on some surer and safer basis. . . . While adhering faithfully to the remedy of joint state action for redress of common grievances, I beseech you to remember that no conjuncture of events ought to induce us to abandon the right of deciding ultimately on our own destiny." [2] By means of an active interchange of letters these two executives closely coördinated the policies of the advocates of Southern independence in their respective states. Each legislature provided for a convention, but arranged for many months to elapse before their assembling, in order that time might be had for a campaign to bring the rest of the South to equally advanced position.

The Southern Rights Association at Charleston was eager for pamphlets and magazine articles to reissue as well as for new manuscripts to publish. An essay written anonymously by M. R. H. Garnett of Essex County, Virginia,[3] was put through a fourth edition partly because of the statistics it contained, but doubtless mainly because of its conclusion: "The South loves the equal Union of our forefathers for its historic associations and the world-wide glory of its stars and stripes. But she will not tamely submit to see *her* stars changed into satellites. . . . No power may stay her onward march to equality or independence." From the *Southern Quarterly Review* of January, 1851, the association lifted

[1] J. F. H. Claiborne, "Life and Correspondence of John A. Quitman," Vol. II, p. 50.

[2] "Message of His Excellency, W. B. Seabrook, read to both houses of the Legislature of South Carolina, on Tuesday, November 26, 1850." Charleston, 1850.

[3] "The Union, past and future: how it works and how to save it." By a citizen of Virginia. Fourth edition, Charleston, 1850.

"The Rights of the Slave States," by an anonymous Alabamian who appealed for Southern unity, and a second article, "Is Southern Civilization Worth Preserving," whose anonymous author concluded: "Christianity struggled against Mohammedanism; it is ours to sustain civilization against Africanism."

Among the South Carolinians the battle of pamphlets was fought with both talent and spirit, although the opponents of immediate secession were themselves divided into opposing camps of unionists and coöperationists. The leading protagonist of unionism was William J. Grayson, the collector of the port of Charleston, who had himself been a life-long pro-slavery champion as demonstrated in his poem, "The Hireling and the Slave." Grayson's first utterance in the secession controversy was a pamphlet dated October 17, 1850, which quickly went to a second edition. He praised the Union as maintaining internal peace, securing free trade and social intercourse throughout the country, and conferring unexampled prosperity. While United Italy and United Germany were the day-dreams of Italian and German patriots, he deplored that Americans, with their sense of the benefit of union deadened by long familiarity, were likely to test its value by its loss. He admitted that the South had abundant provocation to resentment, but he said: "For my own part I cannot but hope that the feeling of alienation and the causes that have produced it may be equally transient. It was thought a virtue in ancient times not to despair of the Republic, and there is no reason why it should be any the less a patriotic duty now. That causes of dissension and dispute should spring up from time to time, between states so numerous and various in interest, is not surprising. . . . But so long as the conservative power of the Confederacy exists, these contentions are harmless. . . . The causes which produce them pass away like other fashions of opinion. New combinations of interest are formed, other men with different principles and altered sentiments occupy the political field, and amid the excitement of new pursuits or contentions look back with wonder at the angry disputes which excited the passions of their predecessors. . . . At least let us not suffer anger and in-

dignation, however just, to hurry us into measures the consequences of which no human eye can perceive." He thought that a boycott of Northern trade was all that the circumstances called for. He denied the analogy between the American colonies and the Southern states, on the ground that the colonies had had no share in the imperial government. He deprecated the project of a Southern Confederacy, asserting that no states east of South Carolina or west of Mississippi would join it. He prophesied that even were such a confederacy formed, it would be paralyzed by strife between the people of the mountains and those of the coast, and the chain of states would be but a rope of sand. "Once break up the present Confederacy," said he, "and the principle of voluntary cohesion is gone forever." Finally he denounced with special vigor the project of separate secession, censuring as unworthy of South Carolinian character the argument that her action would force her neighbors to join and support her.[1]

An anonymous pamphleteer, signing himself "One of the People," promptly replied to Grayson, expressing pained surprise at his change of allegiance and attributing it to momentary panic. Prejudice and passion, said he, could not account for the popular eagerness for independence. "There has been too much time, too much discussion. In Congress and out of Congress, in popular assemblies, in private circles, at the private fire-side, in the temples dedicated to the worship of God — in all of these has this question been again and again presented to us. . . . If we have erred we have wilfully erred. If we exaggerate, intentionally have we done so." He stressed the multitude of assurances the people had received from official and unofficial sources that there was no hope of redress from Congress, and asserted as a certainty that the leading Southern states would secede. He scouted a commercial boycott as impracticable and futile if practicable. He

[1] [W. J. Grayson] "Letter to His Excellency Whitemarsh B. Seabrook, Governor of South Carolina, on the Dissolution of the Union." Charleston, 1850. Grayson was echoed in the legislature by B. F. Perry, well known as the editor of the Greenville *Mountaineer*, in a speech promptly put into a pamphlet: "Speech of the Hon. B. F. Perry of Greenville District, delivered in the House of Representatives of South Carolina on the 11th of December, 1850." Charleston, 1850.

claimed that Southern conditions would peculiarly promote cohesion: "No separate and independent states ever possessed so many concurring circumstances to unite them and keep them united as these Southern states. They are each identified with an institution peculiar to themselves. . . . Without antagonism in interest, there can be no partial or unjust legislation. . . . Asking the same political privileges, needing the same political protection, their communities resting on the same basis, their laws the same, their language, tastes, sympathies the same, homogeneous in everything that pertains to their political, civil or social relations, they would almost seem to have been marked out by Providence as a people created for an union among themselves, and with no one else." He concluded: "Let others take their course, mine is clear. And in that path which I am bound to follow, you will find thousands of generous spirits who would peril life to maintain their equality in the Union and encounter greater danger to maintain their independence out of it." [1]

Grayson promptly replied to "One of the People" and was answered in turn, anonymously, by "Another of the People." This writer complained that the rights of intercourse within the Union were imperfect and unequal, for while Northern goods and incendiary literature might be sent anywhere, slaveholders might not send their slaves to the mines of California nor sell them in the District of Columbia. "But suppose . . . that this perfect freedom of trade and intercourse were an unmingled blessing, might it not still be purchased too dearly? . . . In our case we pay for this freedom of internal trade at the price of restricted commerce with the world. It has cost us the life-blood of Southern prosperity." He denied that peace between the states had been attributable to the Union. "Our common interest and community of feeling arising from the joint struggles of the Revolution are the causes thereof. . . . In fact the confederation has been the mother of discord and bitter heartburnings. There all

[1] "A letter on Southern Wrongs and Southern Remedies, addressed to the Hon. W. J. Grayson in reply to his Letter to the Governor of South Carolina on the Dissolution of the Union." Charleston, 1850.

our differences have commenced and widened. England and France are non-slaveholding countries, and yet we have with them not a mere show of peace but real fellowship of feeling, whilst with the free states of our confederacy we have constant contention and turmoil. Why this difference? Who can doubt that the Union is the moving cause? And so long as the enemies of our institutions may use the power of the common government to disturb us, just so long must we look for disturbance. The breach must continue to widen, until fierce and uncontrollable civil war be the result." In remedy he urged prompt measures, but not secession by a separate state. "The dissolution of the Union is almost inevitable; its end is nigh. We have but to encourage and cheer our sisters, and to prepare ourselves for the conflict that is coming. This is no time to listen to the voice of passion, or to follow the counsels of the rash. The issues are too momentous to be put in jeopardy by a heedless step. The occasion requires of us to prepare and husband our resources; to look at the great end to be reached, and coolly to adopt such measures as are sure to attain it." [1]

The coöperationism voiced in the pamphlet just quoted was indorsed the next year by W. A. Owens, a member of the legislature from Barnwell district, in an address to his constituents with an added warning of the impotence of South Carolina in isolation.[2] It was opposed by J. M. Hutson in a pamphlet also addressed to the people of Barnwell. Hutson argued that the secession of South Carolina would be the most effectual means of procuring the coöperation of the South, and that "extended delay and inaction will be attended with danger and will surely diminish both the chances of ultimate union and our own ability to defend ourselves. . . . And if the hopes of Southern union should fail (as fail I think they must unless South Carolina lead the van), the only hope for salvation from the worst fate that ever befell a

[1] "Reasons for the Dissolution of the Union, being a reply to the Letter of the Hon. W. J. Grayson and to his answer to One of the People." Charleston, 1850.

[2] W. A. Owens, "An Address to the People of Barnwell District on Separate State Secession." Charleston, 1851.

people is in ourselves alone." He thought that South Carolina, even if in solitary independence, with the friendship of Great Britain which he counted as certain, might have peace and prosperity. In conclusion he pointed to the small beginnings of other great revolutions. "If we would be taught by the lessons of history, we would learn that greater union than we now enjoy ought not to be expected. All revolutions have been begun by a few, who thus gave direction and object to the many. . . . From the carnage of Lexington dates the dawn of American freedom. If we will be mindful of the glories of the past; if we will be true to our own destinies and to the cause of freedom and of man; if we will be faithful to posterity, we will not take counsel of our fears. 'The price of liberty is eternal vigilance,' and sometimes it is blood. . . . Here on the soil of our own Carolina we will not be wanting to our trust. We will hold fast, while we have life, to our heritage of freedom won by a glorious ancestry, and if need be we will die in its defence. Then our children, though they may mourn our fate, will bless our names, and future ages will do justice to our memory." [1]

The secession program was also opposed by Bishop William Capers in an address issued at Charleston upon returning to his diocese after a five months' absence in Tennessee, Louisiana, Mississippi, Alabama, and Georgia, where he had found that three-fourths of the people would oppose disunion. Separate action by South Carolina at this time, said he, would invite dire and certain disaster. "There is no battle to be fought for glory by secession, but a fearful struggle with poverty, high taxes, and hard times, without hope of improvement, and great and sore humiliation. And may God grant us deliverance." [2]

The coöperationists of Charleston held a great rally in Hibernian Hall on September 23, 1851, in preparation for the contest

[1] [J. M. Hutson] "Argument for Separate State Action." By "Barnwell." Charleston, 1850. A dedication states the authorship of the pamphlet and dates it February 22, 1850. Internal evidence shows, however, that this was a misprint for 1851.

[2] Published in the Charleston *Mercury*, Feb. 7, 1851; reprinted in Henry D. Capers, "Life and Times of C. G. Memminger," Richmond, 1893, pp. 222–224.

at the polls in the election of delegates to the constituent convention of the state. With James Rose in the chair, flanked by an imposing array of vice-presidents, Thomas Y. Simons, Jr., presented an address which was adopted by acclamation. "It is urged, and with perfect justice," said this address, "that the legislation of the federal government has been, in regard to the slaveholding states, opposed to the letter and spirit of the federal compact, in attempting a prohibition of privileges to which they are entitled." But were one state to secede in isolation, "what could it all avail amid the contending and colossal powers of the world? The daring of our conduct might indeed excite the surprise of the moment; but a short time would tear from us even our own approbation of the act we had committed, and too late would we learn that among nations rights are enjoyed by those only who are able and prepared to defend them." The address in conclusion pledged the coöperationists to stand ready to strike when her sister states should have advanced to the ground which South Carolina already held.[1]

The election in October was a victory for coöperationism; and the contemporary and ensuing events in the neighboring states powerfully strengthened the arguments against immediate secession. In Georgia a Constitutional Union Party, launched by Toombs, Stephens, and Cobb, heavily defeated their Southern Rights opponents in the gubernatorial election; in Alabama Yancey was humiliated in a congressional contest which he had chosen to make a test of public sentiment; in Mississippi the convention election was carried by the unionists, who went so far as to make the convention pronounce on behalf of the state that secession was not a constitutional right; and in Louisiana Pierre Soulé's fire-eating speech at Opelousas elicited no encouraging response. Accordingly when the South Carolina convention at length assembled, at the end of April, 1852, the secessionists were constrained to join in the coöperationist program; and instead

[1] "Proceedings of the Great Southern Coöperation and Anti-Secession Meeting, held in Charleston, September 23, 1851. Southern Rights and Coöperation Documents No. 6." Charleston, 1851.

of an ordinance of secession the convention, by a vote of 136 against 19, adopted a manifesto "That the frequent violations of the constitution of the United States by the Federal government, and its encroachments upon the reserved rights of the sovereign states of this Union, especially in relation to slavery, amply justify this state, so far as any duty or obligation to her confederates is involved, in dissolving at once all political connection with her co-states; and that she forbears the exercise of this manifest right of self-government from considerations of expediency only."[1]

This action marked the end of the early and distinctly literary phase of the independence movement. In the other states the pacificators were triumphant; and South Carolina, rather than try conclusions alone, resolved to bide her time. Some even of her secessionists in the ensuing quietude gradually lost their hopelessness of rights within the Union and fell into the regular ranks of the Democratic party. When the question was reopened in the later fifties by the wrangles over Kansas, the whole issue had to be fought over again; but it could then be shown so easily that the renewed and more menacing sectional activity at the North, growing with the growth of the Republican party, was precisely what the long-time secessionists had given warning against, that private publicists could safely leave to the politicians and the newspapers most of the work in reviving the arguments and driving the lesson home. Nevertheless a "League of United Southerners" was launched for the organization of the people with a view to a stroke for independence in the event of a Republican's election to the presidency;[1] and afterwards an "1860 Association" was instituted at Charleston, mainly for the promotion of pamphleteering.

A certain number of men turned their chief attention to by-projects which it may have been hoped would reach fruition on their own score but whose ulterior purpose was the rousing of

[1] "Journal of the State Convention of South Carolina, together with the Resolution and Ordinance." Columbia, S.C., 1852, p. 18.

[1] An address of the League was published in *DeBow's Review* for March, 1859 (XXVI, 346–347).

the people to a sense of grievance and a spirit of unity. James Stirling wrote from New Orleans in December, 1856, that the advocates of independence were using the respite gained by Buchanan's election to solidify the South for independence, and to that end were promoting, among other things, direct trade with Europe, Southern colleges for Southern youth, and Southern textbooks for the schools.[1] The most conspicuous activities in the category, however, instituted in the following years, were the filibustering expeditions for the acquisition of Cuba, and the agitation for the reopening of the African slave-trade; and the chief machinery of agitation was a series of annual Southern conventions whose nominal purpose was the promotion of commerce. Yancey, who held no public office during the fifties, gave an index to the situation in a speech in the "commercial convention" at Montgomery in 1858. Expressing hopelessness of uniting the South on any one measure, he nevertheless advocated resolutions for reopening the foreign slave-trade as an issue which might bring a definite breach. All the mass of issues united "may yet produce spirit enough to lead us forward, to call forth a Lexington, to fight a Bunker's Hill, to drive the foe from the city of our rights." [2] The next year in reply to a query Yancey wrote a public letter: "You ask me if I am a disunionist *per se*. If by that is meant, am I in favor of disunion in preference to constitutional union, I answer I am not and never have been. In 1850 I advocated disunion . . . [on the ground that] the federal government had . . . in effect destroyed the constitutional compact of union. The South, however, voted down the states' rights band with which I acted, and since then I have not proposed or advocated such a measure. Upon that question I 'bide my time,' and shall be ready with the readiest; believing at the same time that sufficient causes exist for a resort to that remedy, even now, if it were expedient." [3]

The most philosophical résumé of Southern conditions and of

[1] James Stirling, "Letters from the Slave States," London, 1857, pp. 78, 79.

[2] J. W. DuBose, "Life and Times of William Lowndes Yancey," pp. 361–364.

[3] Letter addressed to James D. Meadows of Dadeville, Alabama. DuBose, "Life of Yancey," p. 390.

thought among the secession advocates at the beginning of the final phase of the movement was an unsigned article, "Southern and Northern Civilization Contrasted," in *Russell's Magazine* for May, 1857. The author was doubtless one of the group of literary Charlestonians in which Hayne, Timrod, and Simms were notable figures. "The existence of slavery at the South, and its connection with the Union," said this writer, "has placed us in a peculiar position. Our whole fabric of society is based upon slave institutions, and yet our conventional language is drawn from scenes totally at variance with those which lie about us. Our books come from England and the North, and they appear *prima facie* to be our teachers. For some time we have been content to compromise with our supposed teachers — that is, to adhere rigorously to the facts but complacently adopt the cant (for on our lips it is no better) of a free society. The rude manner in which we have been assailed has opened our eyes to our real condition, and in the spirit of truthfulness some of us have dared to look boldly upon it, and are daily employed in giving utterance to thoughts in strict accordance with the facts presented. And the more truthful the language we have used, the more virulent the denunciations with which our society has been assailed. . . . We of the South were formerly taught to believe that slavery is a social, moral and political evil. . . . We are now condemned for changing our views on this subject. It is an omen for good that we have changed them. . . . We assert, not that slavery is a good thing, but that it is not an evil thing which . . . must be abated. . . . Slavery and poverty are alike disagreeable conditions to look forward to; but in the economy of nature they appear alike indispensable. . . . So long as we regarded slavery as an evil, it was a prohibited subject. . . . Things have changed. There are few persons in the South who have not read 'Uncle Tom's Cabin,' and the popular voice demanded the publication of Dr. Dewey's strictures in our journals. We may well rejoice at the result. We can now respect ourselves. The truth is rapidly emancipating us from the bondage of fear." After discussing the sectional tension, he said: "We . . . conclude that

the union of these states, under any circumstances, is a serious obstacle to our fair development. The philosophy of a people must concentrate itself in their metropolis, . . . and all that portion of the people which is not there represented must be regarded as provincials. Circumstances have placed the metropolis of this Union beyond the direct influence of the slaveholding power. . . . Our place in the Union is provincial, and as such our peculiarities will have to be defended, excused, ridiculed, pardoned. We can take no pride in our national character, because we must feel that from our peculiar position we do not contribute to its formation. . . . In the Union we can never enjoy that repose which is necessary to a healthy development of our character. . . . As London was to our fathers, so are New York and Boston to ourselves. We can never be other than dependants and inferiors so long as we continue to live with them on a footing of political alliance. . . . The philosophy of the North is a dead letter to us. . . . Our philosophy has yet to be developed. We cannot live honestly in the Union, because we are perpetually aiming to square the maxims of an impracticable philosophy with the practice which nature and circumstances force upon us. We cannot do ourselves justice so long as the drag of provincialism is forever clinging to our wheels."

In 1857 James L. Orr of South Carolina was made speaker of the house by the Democrats at Washington because of his unionist proclivities. James H. Hammond was sent to the senate, and Milledge L. Bonham to the house as the successor of Preston Brooks. In the next year Bonham cast one of the only two Southern votes against the English bill as a compromise on the Kansas question, while on the other hand Hammond laid aside his earlier secessionism and in speeches at home said that the South should submit to such degree of Republican rule as was probably in store. These events gave occasion for a public meeting at Edgefield, September 2, at which praise of Bonham and censure of Orr and Hammond were expressed both in the speeches of the day and in letters written by men who could not attend. The latter were published in a pamphlet with a sympathetic in-

troduction by Maxcy Gregg of Columbia. Governor Adams wrote: "I fear two powerful motives will for a time postpone the day of our 'deliverance and liberty,' viz. 'the loaves and fishes' and the feeling which 'makes us rather bear those ills we have than fly to others that we know not of.'" William E. Martin of Charleston wrote: "I have ceased to hope for redress in the Union. . . . I can, then, but deplore the policy which counsels so much patient philosophy in our difficulties. . . . To persuade our people that the Union must last — nay, that their wrongs may be redressed in it — is to familiarize them to its continuance; the next and easy step is to be reconciled to it. I want no such truce." James D. Tradewell of Columbia prophesied the permanent subjugation of the South to date from Republican victory in 1860, and he denounced the cajolery of the Democratic managers in scheduling the next national convention of the party to meet at Charleston. "The effort," said he, "is to drive South Carolina from her safe isolation in order to deprive her of the right to think and act for herself, and thus to secure her aid in nationalizing the government and in ruling it absolutely by the law of party instead of the law of the Constitution." U. M. Robert of Dougherty County, Georgia, deplored the defection of Hammond, whose unionist expressions along with those of Hunter and Wise, Davis and Cobb, he attributed to presidential aspirations. Gregg himself said: "Up to the present time we have seen a continual process going on by which the rights and the interests of the South are compromised away for the sake of preserving party ascendancy and as equivalents for honors and emoluments enjoyed by Southern politicians. . . . To me the movement in South Carolina for an amalgamation with the Democratic party seems portentous of all evil. If Southern unanimity is only to be attained in that way, it will be unanimity in submission and voluntary abasement." "In the times of the Nullification struggle there was a favorite motto of the States Rights party: 'Do your duty and leave the consequences to God.' It would be better if this were held in more remembrance now." [1]

[1] [Maxcy Gregg, ed.] "An Appeal to the State Rights Party of South Carolina, in several Letters on the Present condition of Public Affairs." Columbia, S.C., 1858.

In Virginia Edmund Ruffin, who for many years had been eloquent for Southern agricultural reform, now, through the channel of *DeBow's Review*, issued a series of appeals for Southern unity and independence; and Arthur W. Bagby upon becoming editor of the *Southern Literary Messenger* converted that journal into an outright independence organ. Furthermore, John Scott of Fauquier County issued under the pen-name Barbarossa an elaborate treatise upon "sectional equilibrium" in which, after an excellent review of the pains taken by the Constitutional Fathers to vest a mutual check in the two great sections, and a sketch of the process by which the federal power had grown from small to mighty estate while the North had simultaneously acquired complete preponderance, he said that the North and South had come virtually to be two nations under one government. "If the North, drunk with insolence, will not consent to the restoration of the equilibrium," he declared, "the South has only to withdraw from the violated league and destroy the government growing out of it." He concluded with a quotation from the "Areopagitica": "Methinks I see in my mind a noble and puissant nation arousing herself like a strong man after sleep, and shaking her invincible locks; methinks I see her as an eagle mewing her mighty youth, and kindling her undazzled eyes at the full midday beam; purging, and unscaling her long-abused sight at the fountain itself of heavenly radiance; while the whole noise of timorous and flocking birds, with those also that love the twilight, flutter about, amazed at what she means, and in their envious gabble would prognosticate a year of sects and schisms." [1]

In Maryland an anonymous Baltimorean analyzed the "personal liberty laws" and recited abolitionist expressions in an address intended to promote a local sentiment for Southern solidarity within or without the Union; [2] and in the hope of attaining the same purpose by indirection, C. M. Jacobs of St. Martins and

[1] [John Scott] "The Lost Principle; or the Sectional Equilibrium; How it was created — how destroyed — how it may be restored." By "Barbarossa." Richmond, Va., 1860.

[2] "Fanaticism and its Results: or Facts *versus* Fancies." By a Southerner. Baltimore, 1860.

Robert S. Reeder of Port Tobacco undertook a campaign for legislation to expel or enslave the free negro population.[1]

In Kentucky unionism found significant expression in a pamphlet which an anonymous aged citizen wrote just after the secession of South Carolina, in which he scolded the agitators in both sections, including specifically Lincoln and Seward. These two in their campaign against the extension of slavery, said he, had given voice to a theory absurd in itself but pregnant with calamity. In response to the official sanction given it by the Republican spokesmen, "the disunionists have also adopted this shallow theory of the divided house. They insist upon it as a certainty that the house must fall — that there is no use in waiting to see whether it is going to fall; and therefore they hasten out of it. . . . By thus fully adopting the doctrines of the irrepressible conflict, the divided house and the higher law the disunionists are vindicating Lincoln's pretensions as a true prophet and dignifying the jejune sciolist vagaries of him and Seward as the teachings of the true philosophy of government." The writer himself indorsed a resolution which the Tennessee legislature had adopted, declaring the sectional alienation to be the fruit, not of any necessary conflict between free and slave labor, but of a strife between rival aspirants for official power and plunder.[2]

An anonymous Alabamian under the pseudonym Nathaniel Macon contended in a pamphlet of 1858 that the only security for slavery lay in the continuance of the Union.[3] Among many expressions of the opposite view was an address, "The Doom of Slavery in the Union; its Safety out of it,"[4] delivered in 1860 by John Townsend, who for a quarter-century had been in political retirement.

[1] [C. M. Jacobs] "The Free Negro Question in Maryland" (caption to a letter from Jacobs, Jan. 10, 1859, to the editor of the *State Rights Advocate*); "Speech of Col. Curtis M. Jacobs, on the Free Colored Population of Maryland, delivered in the House of Delegates, on the 17th of February, 1860." Annapolis, 1860; "A Letter from Robert S. Reeder, Esq., to Dr. Stanton W. Dent, on the Colored Population and Slavery." Port Tobacco, 1859.

[2] "South Carolina Disunion and a Mississippi Valley Confederacy." N.p., n.d.

[3] "Letters to Chas. O'Conor." . . . N.p., n.d.

[4] Delivered at a meeting of the Edisto Island Vigilant Association, Oct. 29, 1860; published at Charleston, 1860.

The crucial issue was not the interpretation of the constitution, but the interpretation of race relations. From the foot of the mountains to the sea not a voice was heard among the whites in behalf of negro equality; and the mountaineer spokesmen William G. Brownlow and Andrew Johnson, though stalwart unionists, were in their ante-bellum years as thoroughgoing champions of slavery as were the citizens of the piedmont and the coast. Even Helper, the extravagant censor of the slaveholding aristocracy, damned the negroes in his post-bellum book "Nojoque" far more vehemently than in his "Impending Crisis" he had previously damned the "lords of the lash." [1] While to Helper's mind the negroes might first be emancipated and then either deported or exterminated, to the minds of saner persons the corollary of abolition was elevation to citizenship and exemption from special police regulations. There is abundant reason to believe that the chief element in the virtually unanimous concern of the South to preserve its "peculiar institution" was the resolution to maintain social control by the whites, and not the determination to uphold hard-and-fast slavery as such and without modification. But these two considerations came to the same effect in sectional politics, for in the face of the abolition agitation the Southern people were resolved not even to discuss the faults of their régime publicly for fear of giving its enemies ammunition with which to destroy the South's control of the South. Thus recurs the theme of the pamphlet whose title was quoted at the beginning of this survey of secessionist pamphleteering — a tract of no special merit in itself aside from a quotation from Shakespeare's "King Henry the Fourth" excellently describing the frame of mind in which the Southern people hazarded their lives and fortunes in a stroke for home rule: "Out of this nettle danger we pluck this flower safety."

On the whole, so far as the pamphlet literature tells the tale, it is clear that state rights, while often harped upon, were in the main not an object of devotion for their own sake, but as a means of securing Southern rights. State sovereignty was used to give the insignia of legality to a stroke for national independence. The

[1] "The Impending Crisis" was published in 1857; "Nojoque" in 1867.

framers of the Confederate constitution, it is true, gave official sanction to the state-sovereignty principle; but in large part, at least, this was a mere saving of face. The movement was not so much a flying from the old center as a flying to the new; and it was not by chance that Timrod wrote in 1861, "At last we are a nation among nations," and entitled his poem of celebration "Ethnogenesis."

III

THE FRONTIER AND SECESSION

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III

THE FRONTIER AND SECESSION

As the van of the Anglo-American settlements swung around the arc of the Gulf states, the slaveholding cotton planter followed close upon the advancing frontier and at times marched with it. He hurried forward, seeking and finding fresh and fertile lands where abundant waterways gave a ready means of transportation to market: he prospered greatly, and in prospering fixed his industrial system upon the whole Gulf region. In Texas, slavery had been hampered under Mexican rule, but not arrested; and by 1850 it had taken full possession of the river bottoms near the coast and of the Red River basin in the northeastern part of the state. By this time, however, the frontier line was being pushed rapidly westward into the uplands and prairies, and the planters, though they followed along the rivers, were no longer keeping pace. The margin between gradually broadened, and before 1860 the settled portion of Texas was divided into two regions of nearly equal size and with sharply differing characteristics. These differences caused much anxiety to the pro-slavery state rights leaders of the southwest, who watched with alarm the gradual isolation of the cotton states. Not only was western Texas the only avenue left for the expansion of slavery within the Union after the loss of Kansas, but it was felt that if the necessity for separation should come, the attitude of this large region, bordering on the frontier and chiefly non-slaveholding, would be of very great importance. It is the purpose of this paper to trace the relations of this frontier community with the plantation region and to explain its situation and its attitude in 1860–1861.

The limits of the cotton plantation area were determined chiefly by the considerations of soil and cost of transportation of the

crop to market. The river bottoms near the coast and the upper Louisiana line, generally the first to be settled, are remarkably fertile, while the soil of the uplands over most of those sections is much less productive. The clearing away of the heavy timber was possible only by negroes, and it required capital; the man without capital sought another region. The cotton and sugar grown here must find their ultimate markets outside of Texas; therefore, prior to the building of railroads, the planters clung as close as possible to the "navigable" streams. The roads of this low country were never good, and in the marketing season were at their worst; consequently the cost of hauling from the interior was almost prohibitive. But the upper streams were too shallow for months at a time to float the cotton safely, and, unless the planter was willing to wait upon the vague chances of a rise in the river, the cotton must go by the more expensive route.[1] The first railroads were short lines reaching out from Houston, Indianola, and Shreveport to tap these river bottom districts. With the cheapening of transportation, and the prospect of early extensions of these roads or the building of new lines to the upper country, a great impetus was given to the opening of new plantations and the shifting of slaves westward. The whole white population of Texas, in the middle fifties, seemed to be discussing railroads, for while the development of the frontier waited upon their coming, the planting interest, well aware of its own situation, was planning to extend its area and influence.[2] Although in 1860 cotton culture had not progressed far beyond the lowlands, the slave population extended along the upper river courses like gigantic fingers grasping at the west.

The west had been settled by men of small capital, or none at all, who were seeking cheap and open lands for small farms or the excellent and free pasturage of the prairies for their stock. They

[1] Olmsted, F. L., "A Journey through Texas," p. 90.

[2] "Among all the suggestions to increase the population of the state with a sound and reliable Southern immigration, there are none which appeal to us with greater force than the prosecution of our railroads. If we can afford the state one or two great highways of this kind, we shall give a powerful impetus to the immigration of cotton planters." *Texas State Gazette* (Austin), Dec. 5, 1857.

seldom owned slaves and they grew but little cotton, if any, although the prairie soil was well suited to that crop. For reasons already given, cotton was not yet very profitable in this region, nor, therefore, were slaves. However, there seems to have been no prejudice against the keeping of slaves, except among the Germans and a few settlers in the northwestern counties who had come from free-soil states. Most of the inhabitants were from the old South. Stock raising was a very profitable business, since it cost almost nothing to raise horses or cattle, and they could be made to transport themselves to market. The staple crops were corn and wheat, which were grown only in sufficient quantity for local needs, and they generally found a ready sale. For these small cereal crops slaves were not necessary, in fact their labor was not profitable, and for handling live stock they were considered useless.[1] The unprofitableness of slavery on the upper frontier was due in part, also, to the extremely high price of negroes. The supply had not kept pace with the opening up of new cotton lands, and prices, which were determined by the needs of the cotton region, had advanced rapidly during the last decade. Even the scarcity of hired labor in the west would not justify the purchase of fifteen-hundred-dollar negroes to supply it.[2] In the southwest the constant influx of German immigrants, most of whom were very poor and made a practice of hiring out for a few years after their arrival, rendered slave labor unnecessary.[3] On the Rio Grande frontier slavery made no advance because little cotton was grown, slave owners would not take their negroes where escape to Mexico was so easy, and Mexican labor was cheaper than that of high-priced slaves.

Between sections so different there could not fail to be some division of interests. However, this division did not begin to

[1] J. De Cordova, "Texas: Her Resources and Her Public Men" (1858), pp. 189–190. De Cordova was a pro-slavery Democrat, but he argued that slaves were profitable only for growing cotton and sugar and that they were not needed in western Texas. See also, Edward Smith, "A Journey through North-Eastern Texas in 1847," pp. 84–85.

[2] Olmsted, "Journey through Texas," pp. 107, 114, 237; *Texas State Gazette*, Jan. 29, and July 17, 1858, Jan. 15, 1859.

[3] De Cordova, "Texas," p. 189; Olmsted, *op. cit.*, p. 142.

appear until the middle fifties, for the reason that the country was new, society was yet unsettled, and there were no established political traditions except in so far as they pertained to the fierce personal politics which characterized the earlier period. By the time indicated definite sectional interests had begun to appear and regional or class self-consciousness to assert itself. This had developed first in the cotton-growing section, and the planters, in consequence, had exercised a very strong influence in the early party organizations. But since the constitution of Texas gave the planters none of the peculiar advantages which they had enjoyed in early Virginia or South Carolina, there never was occasion for the bitterness which in those states had characterized the struggle between tide-water slave owner and the yeoman of the piedmont. Nevertheless, a certain amount of sectional jealousy existed. The more populous and richer east complained that, while it contributed the greater part of the revenues of the government,[1] the seat of government was in the west and most of the public money was expended there. The west insisted that the eastern majority in the legislature looked very favorably upon public improvements involving public expenditures in their region, but could see no need of them in the west. In February, 1858, while the planters were in complete control of the government, a law was enacted which permitted any settler upon the public domain to preëmpt one hundred and sixty acres of land for every three slaves owned by him within the state. This provision was unpopular in the west, was severely attacked in the next campaign, and was repealed in January, 1860, after the frontier had made Sam Houston governor. The proposition to reopen the African slave trade, ardently advocated by some of the "regular" Democrats and indorsed in convention by a number of the cotton counties, likewise proved unpopular in the west, although its advocates urged that it would give that region the cheaper labor of which it was so greatly in need. In addition to the hostility of the free

[1] The Comptroller's report for 1859 shows that two-thirds of the assessed wealth of the state was located in one-fourth of the counties. They were nearly all in eastern and southeastern Texas. See the "Texas Almanac for 1860," pp. 204–207.

laborer and the suspicion that it would benefit no one but the planter, this proposition encountered the objection that it would only intensify the dangerous agitation of the whole subject of slavery, that Congress could never be brought to favor it, and that its advocates only intended to use it as a means of sundering the Union. The western men were not ready in 1859 to force such an issue nor to withdraw from the Union in behalf of slavery, and this was one of the two principal reasons for which they defeated Runnels, an east Texas planter, for reëlection to the governorship.[1] The problem of frontier defense was the cause of much resentment in the west against the east Texas politicians. This last was the issue which promised most to alienate the two sections, and it was due to the political skill of the pro-slavery secession leaders that it was ultimately used to win over a large part of the west to the aid of the cotton-planting interests.

Party organizations in Texas had not been based, in the beginning, upon sectional interests. Most of the western men had been Democrats in their original homes and remained Democrats in Texas. Many of the planters, originally Whigs, after the disruption of their party, had gone into the "Know Nothing" organization in 1854. This tendency seems to have been strengthened by their suspicions of the Germans, who were accused of abolition proclivities, and of the Mexicans, who were charged with fraternizing with the negro slaves and inducing them to run away to Mexico. At any rate, the Know Nothing strength was chiefly in the cotton counties, and most of its membership had formerly been Whig. One marked result of the agitations of this party was the prompt adherence of the Germans and Mexicans to the Democratic organization. In 1857 Comal County, almost entirely German, was awarded a banner for polling the largest percentage of Democratic votes.[2] The Mexicans fell under the control of local groups of Democratic bosses who manipulated their votes in accordance with the party program. When, by 1857, the American party had in turn disintegrated, its members came into the

[1] Lubbock, F. R., "Six Decades in Texas," pp. 246, 248.
[2] *Texas State Gazette*, Dec. 19, 1857.

Democratic party, but generally aligned themselves with the nationalist faction.

Perhaps the most influential leader of the "regular" Democrats during the latter half of the fifties was John Marshall, editor and proprietor of the *Texas State Gazette*, which was published at Austin. He possessed unusual talent for political management, and was chairman of the state Democratic executive committee; his paper was regarded as the principal party organ and was regularly awarded the contract for the state printing. Though Marshall's sympathies were almost wholly with the planting and proslavery interests, he saw clearly the danger involved in a political split between the west and the low country, and he devoted his energies to harmonizing their differences under the banner of his party, with the purpose of throwing their united support to the cause of the South when the hour of separation should come. He believed firmly that it was bound to come. Therefore he worked assiduously for the extension of railroads from the coast into central and northern Texas, not only to develop the interior, but to expand the cotton-planting and slaveholding area. He carefully cultivated the friendship of the Germans, denied that they were hostile to slavery or to any Southern interest, and welcomed them into the ranks of the Democracy.[1] His unfortunate advocacy of the reopening of the African slave trade was based largely upon the supposed advantages to the west of cheaper slave labor. But all this work came near being brought to nothing by the terrible Indian raids of 1857–1859.

Although sporadic troubles with the Indians had occurred ever since annexation to the Union, for several years prior to 1857 the frontier had enjoyed comparative immunity from their depredations. But the rapidly extending settlements were now encroaching upon the hunting ground of the prairie tribes, who were also being pressed southward from Kansas, and in the late fall of 1857 the Comanches of the plains and the unreconciled Kiowas and Kickapoos of the Indian Territory broke loose upon the exposed northwestern counties in a series of murderous raids. Unable

[1] *Texas State Gazette*, Nov. 14, 1857.

to fend off the savages, the settlers appealed to Governor Runnels for protection.

The governor turned to General Twiggs commanding the United States troops on the Texas border. Twiggs had under his control about thirty small companies of infantry and mounted infantry, distributed among some fifteen posts along the great half circle of frontier which extended from Brownsville up the Rio Grande and northward to the Red River, a total distance of over thirteen hundred miles.[1] That these infantry companies could give protection to any part of the frontier against the sudden incursions of the swift Comanche horsemen was quite impossible and was well understood in army circles. Their expeditions in pursuit of the ravagers were usually made in baggage wagons which crawled across the rough country at ox-like pace only to give up after a day or two and return, to the contemptuous amusement of the Indians and the angry disgust of the Texan pioneer.[2] Even when the infantry was mounted or replaced by cavalry, the situation was not greatly improved, for the heavy army horses could not go long without grain or far without being shod, while the swift and hardy little Indian ponies subsisted easily upon grass. "There is not one case in fifty," admitted General Twiggs, "where our soldiers can come up with them."

Obviously, the only force that could cope with a foe of this kind was one that would always be ready to go at a moment's notice, that could move as fast as the Indians, travel as far, follow them into their own country and drive them farther away from the white settlements. Such a force, it was believed, could best be obtained by enlisting a regiment of mounted rangers under the command of men experienced in Indian warfare. From time to time this had been urged upon Congress by the members from Texas, but the bills had always failed of passage, partly on the

[1] Twiggs to Runnels, June 12, 1858, MS. in *Executive Correspondence, Texas Archives*, File Box 190.

[2] J. S. Ford to Runnels, June 2, 1858, MS. in *Exec. Corres.*, File Box 190; Sam Houston to J. B. Floyd, April 19, 1860, *same*, File Box 193; Speech of C. S. West, H. of Rep., Tex. Legislature, Jan. 11, 1856, in *State Gazette Appendix*, pp. 197–198.

score of economy, partly on the ground that there was insufficient proof of its necessity. In the spring of 1858 a bill was enacted providing for a volunteer ranger regiment to be stationed in Texas, but no money was appropriated for it and it never was called into being. The Texans had anxiously watched the course of the bill, and their keen disappointment and resentment found vigorous expression.[1] Nor did the efforts of the state to obtain reimbursement for the money which it had itself expended in frontier defense get any better hearing.

In the meantime the raids of the savages had become more frequent and daring. From Montague County, next to the Red River southward through Jack, Young, Palo Pinto, Parker, Erath, Hamilton, Coryelle, Lampasas, Bell, Mason, Llano, Gillespie, and Kerr, the attacks spread, and through the winter of 1857–1858 there was no relief. Swooping down unexpectedly upon isolated families, murdering indiscriminately or carrying off the women into a horrible captivity, they collected and drove off all the horses within reach and killed all the cattle they came across. Before the settlers could organize for pursuit, they were too far away to be overtaken. The soldiers could only march out of their posts and back again. The stricken people, too poor to maintain forces of their own, appealed incessantly to Governor Runnels to call out a regiment of rangers or to authorize companies to be raised all along the frontier line. He put one company in the field under John S. Ford, who won a victory over some Indians in May, 1858; but he was in constant fear of the growing expense and disbanded the company soon afterwards. Ford himself was convinced by what he had seen that a regiment was necessary and urged it upon the governor. "The question of cost should never . . . enter into a matter of life and death." [2]

But the Indians had been checked only temporarily, and now their raids grew even worse. The counties of the northwest were being rapidly depopulated, the settlers going back to eastern

[1] *Texas State Gazette*, April 10 and July 10, 1858; Ford to Runnels, June 2, 1858, MS. in *Exec. Corres.*, File Box 190.

[2] Ford to Runnels, June 2, 1858, MS. in *Exec. Corres.*, File Box 190.

Texas or to the old states from which they had come. It was asserted that only one family was left in Montague County.[1] Along the whole line of the frontier, the settlers who remained were leaving their farms and "forting up" together. By this time the depredations had extended to the west of San Antonio. Runnels continued to bombard Secretary of War Floyd and President Buchanan with demands for more troops, but with little visible effect. The army was small and Texas had as many troops as could be spared her.[2] However, upon the suggestion of General Twiggs several companies of the second cavalry under Major Van Dorn were sent to the Wichita Mountains in the Indian Territory, where on October 1, 1858, a decisive victory was won over a large band of Comanches. But Van Dorn could not cover the whole country, and Runnels called out two companies of rangers. Again Captain Ford was warned against keeping too many men or incurring other unnecessary expenditures, with the explanation, "There is much dissatisfaction in many portions of the country at what has already been done."[3] These companies were able to ward off attacks from their immediate vicinity, but not from other districts.

Trouble now arose over the Indians who were located on the two "reserves" on the upper Brazos under Federal supervision. On the lower reserve, which was in the edge of the settlements, were Caddoes, Tonkaways, and others, fragments of tribes which had long been at peace with the whites. On the upper reserve were Comanches, more recently brought in, who had all along been suspected of complicity in the raids of their wild kinsmen. The excitement grew, and shortly afterwards a large body of settlers headed by turbulent leaders threatened extermination to the reserve Indians. Runnels ordered them to desist and called upon General Twiggs for troops to protect the reserves. Twiggs declined, alleging that it was a matter for state control, and there-

[1] Ben Hubert to Runnels, Oct. 14, 1858, MS. in *Exec. Corres.*, File Box 190.

[2] Runnels to J. B. Floyd, July 10, Aug. 9, 12, and Nov. 2, 1858; Runnels to Buchanan, Sept. 17, 1858. MSS. copies in *Exec. Corres.*, File Box 190.

[3] Runnels to Ford, Dec. 12, 1858, *Exec. Corres.*, File Box 190.

upon Runnels besought the United States government to remove the Indians. This was finally done, although the frontiersmen objected that the Indians would be more dangerous in the Territory than on the Texas reservation.[1] This episode added greatly to the burden of the governor's unpopularity in this region. Their removal was bitterly resented by the Indians, and there is but little doubt that they were guilty of raiding after this, if innocent before. At any rate, the depredations continued and the frontier had no peace.

It was not strange that, under the conditions above described, there should have been much exasperation in the west against both the general government and Governor Runnels and his political associates. It was charged that the Federal Indian agencies in Kansas and the Territory supplied the arms and ammunition which the savages used against Texas. "The Department of the Interior," said the *State Gazette*, "negotiates treaties with the Indians and, in accordance with their stipulations, supplies them with the sinews of war. When they have thus been armed, provisioned, and equipped at the expense of the government, the secretary of war sends out troops to fight them."[2] Houston had made a similar statement in the United States senate a few years before this.[3] It was the general belief also that the Indians sold to the white traders about these posts the horses they had stolen in Texas.[4]

Threats of secession, hitherto confined to the cotton region, now began to be heard in the west. Captain J. S. Ford, fresh from scenes of Indian ravages, wrote to Governor Runnels: "The citizens of this state are entitled to protection and they ought to

[1] R. S. Neighbors to Runnels, Dec. 30; J. J. Sturm to Runnels, Dec. 29, 1858; A. Nelson to Runnels, Jan. 23, 1859; Peter Garland to Runnels, *cir.* March 1; N. W. Battle to Runnels, March 14; Runnels to Twiggs, March 18; Twiggs to Runnels, March 21; John Hemphill to Runnels, March 25; Geo. Barnard to Runnels, May 4, 1859, MSS. in *Exec. Corres.*, File Box 191. Geo. Erath to John Marshall, in *Texas State Gazette*, June 11, 1859.

[2] Dec. 11, 1858.

[3] Jan. 29, 1855; "Globe," 33d Cong., 2d Ses., p. 440.

[4] Numerous letters to Runnels, MSS. in *Exec. Corres.*, File Boxes 190 and 191.

have it. . . . [If the United States refuse it] . . . let Texas assume high ground. Protection and allegiance go hand in hand. There is no principle better established than that when a Government fails or refuses to protect its citizens, the ties of allegiance are dissolved and they have a perfect right to take care of themselves. In my opinion Texas has already had ample cause to sever her connection with the Union on this very head." [1] The *Texas State Gazette* had voiced this feeling many times. "Should the volunteer bill fail, should Federal aid and protection be denied, and the heavy hand of taxation still be imposed upon us, who does not know what will be the result? The strong love we entertain for the Union, when confronted with the blood of our citizens, would be driven headlong by the board. . . . " "If Texas were an independent Republic, collecting . . . her own tariff, she could sustain this burden. . . . It follows that if Texas is driven by the criminal neglect of the Federal government to self-protection, in spite of the memories of the past, she will be forced by the necessities of the present to resume her independence, and protect herself out of her own resources." "The frontier settlers have suffered terribly from the inaction and indifference of the Federal government. . . . Millions have been spent in Utah — not one cent of extra appropriation in Texas. The bloody knife which has reached the hearts of our people may have been held in the hand of the reckless savage, but the general government stood by listlessly when the deed was done." [2] On the other hand, George Erath, state senator from the frontier and one of the most influential men of that section, insisted that secession would make the situation worse by giving the Indians refuge in a foreign territory, as had been the case before annexation.[3]

The west, as a whole, however, was not ready to secede in 1859, for it believed that with a change of administration the Indians could be checked and driven off.[4] The feeling against Runnels, in

[1] June 2, 1858, MS. in *Exec. Corres.*, File Box 190.

[2] Issues of April 10, Dec. 14, 1858, May 21, 1859.

[3] Letter to John Marshall, in *Texas State Gazette*, June 11, 1859.

[4] San Antonio *Herald*, June 23, 1859. Louis Martin to Houston, Jan. 27, 1860; W. C. Wiseman to Houston, Feb. 14, 1860, MSS. in *Exec. Corres.*, File Box 192.

fact, seemed stronger than that against the government at Washington, partly, perhaps, because it was bound up with the antagonism of the west for the east Texas politicians. Sam Houston now became an independent candidate for the governorship against Runnels, who was again the nominee of the Democratic convention. "Old Sam" was a remarkably effective campaigner before the average Texas audience, and the conspicuous planks of his platform, relief for the frontier and opposition to both secession and the reopening of the African slave trade,[1] were certain to appeal strongly to the dissatisfied western men. His decisive victory was in part a personal triumph, but it was won in the west, and the votes of that region were based chiefly upon the issues he upheld.[2] The cleavage between the west and the cotton planters showed deeper at this election than ever before and gave great concern to the pro-slavery leaders.

Had Houston been able to give adequate protection to the frontier, or, more especially, had Congress promptly provided the volunteer regiment which the west had set its heart on, it is more than probable that this region would have felt little inclination to secession in 1861. Houston sent an agent to Washington early in 1860 to urge action upon the volunteer bill, but his representatives found the Republicans hostile and the President timid before the Republican majority in the house.[3] Though Congress appropriated $125,000 in June, 1860, to reimburse Texas for frontier defense, Houston was never able to obtain any part of it because of the failure of the state comptroller to furnish the necessary vouchers. The governor's efforts to give state protection to the frontier were only partially successful. Through the first

[1] The reopening of the foreign slave trade had not been indorsed by the Runnels convention, but some of the leaders of that faction were known to favor it, and it figured largely in the campaign. See Lubbock, "Six Decades in Texas," p. 248.

[2] The western Germans, except in the exposed counties, went against Houston, as did the Mexican vote on the Rio Grande frontier. Both remembered his former Know Nothing affiliations, and the Mexicans, moreover, were under the complete control of the local Democratic "rings."

[3] Forbes Britton to Houston, March 3, 1860, *Exec. Corres.*, File Box 193. The bill passed the senate, but was killed in the house. *Ibid.*, May 29, 1860.

months of his administration the savages raided with as great impunity as ever, but with the calling out of rangers and minutemen, to the total number of 720, they disappeared from the border.[1] No money had been appropriated, however, to keep this force in the field, and when it was disbanded or reduced the depredations were renewed. At the beginning of 1861 Texas was confronted with a heavy deficit, and permanent relief had not been obtained. Moreover, because his defensive measures were not equal to popular anticipation; because he refused to make or allow others to make attacks on the suspected "reserve" Indians of the Territory; and because of his tactless handling of certain frontier leaders, Houston had lost his popularity of a year before; and it was evident that he would have little influence upon popular action in the crisis to which the country was hurrying.

However, the current of popular feeling was running too deep and strong in 1860 to be checked or diverted by any man. The most remarkable feature of the situation in Texas was that while the plantation region approached the issue with comparative calm because it had long before made up its mind what to do in the event of "Black" Republican success, the north and northwest counties, which were far less directly interested in the protection of slavery, were thrown into the most intense excitement. Throughout the Indian troubles rumors had persistently spread that Kansas free-soil emissaries of the John Brown type were concerned in the horse-thieving attacks upon Texas, and it was commonly believed that the stolen horses were disposed of in Kansas. In the summer of 1860 a number of north Texas towns were burned in a manner that strongly suggested the presence of a band of incendiaries. The pro-slavery papers promptly raised the cry of "abolition conspiracies!" and soon afterwards correspondence of the alleged conspirators was produced that seemed to confirm the worse suspicions. According to these letters an organization had been formed in Kansas, backed by New England money, to replace the population of north and west Texas with free-soilers. This was to be done partly by the emigrant aid

[1] Houston's Message to the 8th Legislature, called session, Sen. Journal, p. 8.

societies which had won Kansas for freedom, partly by the use of force. Indian attacks were to be encouraged, towns and mills were to be burned, pro-slavery sympathizers gradually to be pressed out of the region, and invading bands of free-soilers under the notorious Lane and Montgomery were to finish up the work.[1] With the "Black" Republicans in power at Washington, Texas would be left defenseless. The settlers remembered vividly the previous opposition of Republican members of Congress to the raising of a volunteer regiment, and touched by that mania which sometimes seizes upon a people and which admits of no counter argument, they gave way to an outburst of frenzied wrath. Mass meetings were held, vigilance committees were appointed, suspected persons were lynched or driven from the country. How much of fact and how much of invention were in the stories that circulated, it is impossible now to know and it is not worth while to ask. The secessionists, intent upon winning this region to their cause, supported the charges, while the unionists accused the Democratic leaders of inventing the stories and stirring up the excitement for party purposes.[2]

Whether this excited state of feeling greatly affected the division of the vote between the Bell and the Breckenridge electors — there were no others in Texas — it is difficult to determine. The Conservative Unionist vote, which was but little more than one-fourth of the total, though almost equally distributed over the rest of the state, was much lighter in the northwest than elsewhere.[3] Under quieter conditions one would have expected Bell's vote here to be much heavier. When the call for a state convention was issued, unofficially, in December, 1860, the upper frontier had just experienced one of the most destructive raids in its history. The response was prompt, and the resolutions of the local mass meetings and conventions show that protection for the settlements was the uppermost consideration in the minds of the western men.[4]

[1] *Texas State Gazette*, Sept. 22, Nov. 10, and Dec. 1, 1860.

[2] See references to editorials of the Austin *Intelligencer* (Unionist) in *Texas State Gazette*, Sept. 23, 1860.

[3] The returns are in the office of the Texas secretary of state, Austin.

[4] *Texas State Gazette*, Jan. 5, 12, and 19, 1861.

The convention assembled at Austin on January 28, 1861. It was officially recognized by the legislature and therefore by Governor Houston, though he did it reluctantly. On January 30, an ordinance of secession was reported, of which the first section ran as follows:

"Sec. 1. Whereas, The Federal Government has failed to accomplish the purposes of the compact of union between these States in giving protection either to the persons of our people upon an exposed frontier or to the property of our citizens; and whereas the action of the Northern States of the Union, and the recent development in Federal affairs, make it evident that the power of the Federal Government is sought to be made a weapon with which to strike down the interest and prosperity of the Southern people, instead of permitting it to be as it was intended our shield against outrage and aggression: Therefore,"[1] . . . etc.

This ordinance was adopted on February 1, by a vote of one hundred and sixty-six to eight, every one of the frontier delegates supporting it. On the next day was adopted a "declaration of the causes which impel the state of Texas to secede from the Federal Union," one paragraph of which read as follows:

"The Federal government, while but partially under the control of these our unnatural and sectional enemies, has for years almost entirely failed to protect the lives and property of the people of Texas against the Indian savages on our border, and more recently against the murderous forays of banditti from the neighboring territory of Mexico; and when our state government has expended large amounts for such purposes the Federal government has refused reimbursement therefor, thus rendering our condition more insecure and harassing than it was during the existence of the Republic of Texas."[2]

It having been provided that the ordinance of secession should be submitted to the people, the election was fixed for February 23, and the convention presently adjourned to await the result.

The opposition to secession had not been based upon the idea of acquiescence in the Republican program — for there were few "submissionists" discoverable in Texas — but upon the argument that by coöperation with the other Southern states, guaran-

[1] "Journal Secession Convention of Texas," pp. 35–36.
[2] "Journal of the Secession Convention," p. 62.

ties could be obtained that would make disruption of the Union unnecessary. However, by February, six of the cotton states had already gone out and it was now too late to coöperate with them except by following them into the new Confederacy. Texas, by its geographical position, had much in common with the other border slave states, and the question now simply was whether it should with them await the development of the policy of the "Lincoln government" or act at once. The coöperationists had been weakened by the irresolution of governor Houston, who vacillated between absolute opposition to secession and the re-establishment of the old Republic, to which, of course, secession was a necessary preliminary.[1] A more cogent argument against secession, had the people been in a mood to listen to it, was the financial inability of the state to provide any frontier defense without incurring a heavy debt, and the improbability that the new Confederacy would be able to provide it soon enough. But the convention's committee of public safety was already receiving the surrender of the United States troops along the frontier line, and help must be had elsewhere. Rumors of the movements of the "predatory abolition bands" of Kansas continued to fly about, and the news that at last the Republicans of the lower house of Congress had passed a bill for a volunteer regiment to operate on the Texas frontier was received as a direct threat of attack rather than a pledge of assistance.[2]

When the people had registered their will, the vote stood 46,129 for secession to 14,697 against it.[3] An analysis of the vote showed that the west had sharply divided. Only the region about Austin and from there westward and the north Texas counties south of Red River had gone against secession. Neither section had suffered from the Indian raids of recent years. The first-named district had been carried by the western Germans and an influential group of conservatives about Austin. The northern counties,

[1] Houston to J. M. Calhoun, commissioner from Alabama, Jan. 7, 1861; "Official Records, War of the Rebellion," Ser. IV, Vol. I, pp. 72–76. Houston's Message to 8th Legislature, called session, Sen. Journal, pp. 16–20.

[2] *Texas State Gazette*, Feb. 23, 1861.

[3] "Journal of the Secession Convention," pp. 88–90.

like the western tier in Arkansas,[1] feared invasion from the Indian Territory. The northwest had reacted from the neglect of the federal government to provide protection and the fear that Republican rule would bring even worse conditions upon it; it voted solidly for secession and carried with it the adjacent counties in the central west lying above the plantation belt.

The help which had been expected from the Confederate government never came; and Texas was forced to keep troops of her own in the west throughout the war. It was near the close of reconstruction before relief came to the desolated frontier.

[1] David Hubbard, Commissioner, to Gov. A. B. Moore (Alabama), Jan. 3, 1861, "Official Records, War of Rebellion," Ser. IV, Vol. I, p. 3.

IV

THE FRENCH CONSULS IN THE CONFEDERATE STATES

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IV

THE FRENCH CONSULS IN THE CONFEDERATE STATES

"The duties which consuls have to perform in a belligerent territory, particularly in the event of civil war, are among the most important entrusted to international agents." [1] These important duties were complicated in the South during the Civil War by the fact that frequently it was well-nigh impossible for the consuls to determine whether a given applicant for their protection was really a foreigner or not; for instance, an English-speaking person in Savannah, a French-speaking one in New Orleans, or a Spanish-speaking one in San Antonio.

In the limits of this essay it is impossible to consider the questions of international law involved, or how they were affected by the events of these four years; nor can a complete history of each, or even of a single consulate, be given. Only a few incidents from the less important places will therefore be cited, followed by a brief summary of the leading events in the more important districts.

Of the routine duties, such as the issuing of passports and clearances, it is sufficient to say that a consul's passport was of little use unless countersigned by the military authorities, and the blockade soon materially curtailed where it did not entirely suspend the issuance of clearances.[2] Though a consul is a commercial agent, with no diplomatic functions in ordinary times,[3] in the

[1] *Annals of the American Academy*, Vol. XIII, p. 342.

[2] The records of the Confederate customhouse show that no French vessels entered or cleared from New Orleans between Oct. 29, 1860, and June 6, 1862.

[3] Hall, "International Law" (1904), p. 317; Moore, "Digest of International Law," Vol. V, p. 34.

emergencies of war he has often to assume powers and make representations which usually pertain to diplomats. As, at this time, the nearest diplomatic representatives were at Washington, and communication with them was uncertain, slow, and productive of suspicion on the part of both Union and Confederate authorities,[1] the consuls in Southern cities had frequently to appeal directly to both local and Confederate officials on questions of a political nature. In fact, the greater part of their activities during the war were political rather than commercial.

When the Confederacy was formed, thirty-nine foreign powers had consular representatives in the South — one man sometimes representing two or more nations. As most of these representatives had been at their posts for a long time, and as some of them were native Southerners, their sympathies were usually with the Confederacy, so long as its government did not infringe upon what they considered the rights of their compatriots. It is well known that August Reichard, Prussian consul at New Orleans, became a Confederate brigadier, and E. W. Barnwell, acting-consul for Russia at Charleston, had his exequatur revoked by the Federal government for entering the same service.[2] Only one consul ever received an exequatur from the Confederate government, though several had theirs canceled by it.[3]

The status of foreign agents in the South in 1861 was a very questionable one. The sentiment of the more aggressive secessionists was that all exequaturs in force in a given state were automatically invalidated by that state's secession.[4] The position ultimately taken by the Confederate executive was that since prior to the secession of the states forming the Confederacy the government of the United States was their legally constituted

[1] *Cf.* the warning from the State Department to the Navy in "Official Records of the Union and Confederate Navies," Ser. 1, Vol. VI, p. 178.

[2] "Official Records of the Union and Confederate Armies," Ser. 3, Vol. II, p. 722; Bancroft, "Life of W. H. Seward," Vol. II, p. 203.

[3] "Journals of the Congress of the Confederate States," Vol. V, p. 42; Bonham, "British Consuls in the Confederacy" *passim;* Butler, "Judah P. Benjamin," *passim.*

[4] "Journals of C. S. Cong.," *loc. cit.; New Orleans Picayune,* Aug. 8, 1861.

agent for the management of foreign relations, and as the revocation of an agent's authority does not invalidate lawful acts previously done, the exequaturs issued by the Federal government previous to the formation of the Confederacy were valid so long as their holders treated the new government with proper respect. Should they misconduct themselves, their exequaturs would be revoked, and any newly appointed consuls must secure a permit from the Confederate government.[1] This policy, entirely consistent with the state rights theory, and a very natural one for a *de facto* government anxious to offend no one, was adopted very consistently by the Confederate department of state.

So far as my researches go, the French consuls, as a class, seem rarely to have connived at evasions of the blockade, even to the extent of inclosing unofficial mail in their despatch bags. John Slidell, Confederate commissioner to France, tried in April, 1862, to secure permission for the transmission of Confederate despatches in this way. As the Federal government had given permission for neutral warships to communicate with consuls of their governments only on official matters and had refused the request of French business houses to correspond with consuls in the blockaded region, even on purely commercial matters, the request no doubt met with a refusal, as did that of the French legation to the Federal authorities relative to sending their correspondence with the consuls through the Union lines at Norfolk.[2]

France had, in 1861, consular representatives in seventeen Southern cities, of which Richmond, Charleston, Mobile, New Orleans, and Galveston were the most important. Only two other places interest us, and they may be disposed of at the outset.

M. Bonnecaze, vice-consul at Baton Rouge, was a citizen of the place. When Farragut's squadron was off the city in May, 1862, M. Bonnecaze wrote the commander that an attack on one

[1] "Pickett Papers" (*i.e.* MSS. Archives of Confed. Govt.); "Journals of C. S. Cong.," *loc. cit.*

[2] Richardson, "Compilation of Messages and Papers of the Confederacy," Vol. II, pp. 231, 363; U. S. Dept. of State, "Diplomatic Correspondence" (Wash.), 1861, 253, 1862, Jan. and Aug.; "Off. Recs." (Navy), Ser. 1, Vol. VI, f. 504.

of the boats had not been made by the inhabitants of the city, but by a troop of rangers from the country. Farragut had retaliated by firing on the city, and the consul wished to avoid its recurrence without previous notice to non-combatants. This was promised him. At the battle of Baton Rouge, August 5, 1862, the son of M. Bonnecaze was captured while fighting in the Confederate ranks. This made General B. F. Butler suspicious of the father's neutrality, and this suspicion on his part soon included all foreign agents in Louisiana.[1]

The vice-consul at Key West, F. J. Moreno, was appointed marshal of the Confederate admiralty court there, in July, 1861. As that port remained under Federal control, the honor was an empty one, but it tends to show the *rapport* with local sentiment of consular officials.[2]

The consuls of most powers represented in the South considered Richmond as a sort of clearing house, or perhaps a deputy legation. The Richmond consulates received despatches from farther South to be sent on to their respective legations; and when the more remote consuls did not get prompt replies to their letters to the Confederate authorities, they would telegraph their colleagues in Richmond to see personally the necessary officers. In fact, as there were no diplomatic agents in the Confederacy, and as there was great danger of the capture of despatches sent by blockade runners, the Confederate and European governments seemed inclined to treat the consuls at Richmond as *chargés d'affaires*. This was mainly in regard to the despatches intended by one of these governments for the other. Thus, in January, 1863, when Commodore Ingraham temporarily dispersed the blockading fleet at Charleston, Secretary of State Benjamin sent M. Alfred Paul, French consul at Richmond, a proclamation, announcing that the blockade was raised, and requested M. Paul to forward it to Paris. The Emperor requested through Paul

[1] "Off. Recs." (Navy), Ser. 1, Vol. XVIII, p. 515; (Army), Ser. 1, Vol. XV, p. 549. (The name is here incorrectly spelled Bomegass.)

[2] "Journals of C. S. Congress," Vol. I, p. 185; *cf.* "Off. Recs." (Navy), Ser. 1, Vol. VI, p. 178, *et seq.*

the design of a cannon invented by Captain Brooke of the Confederate navy. Drawings were furnished Paul with the stipulation that care be taken to prevent their falling into the hands of the Federal authorities. When the French government desired to thank the authorities at Richmond and Charleston for offering the use of the dry dock at the latter place when a French warship ran aground there in February, 1863, Paul was again the medium employed.[1]

Paul's most important correspondence with the Confederacy related to tobacco, in part purchased by the French government and in part by French citizens. The Belmonts of New York had bought for the Rothschilds about 2200 hogsheads, which was sequestrated by the Confederacy as the property of the Belmonts. Slidell found from their books that it was a *bona-fide* purchase by the Rothschilds, and the Confederate court decided the case in their favor.[2]

A larger amount was claimed for the French government. Paul informed Benjamin that he had bought it under orders, and as he understood from the secretary's conversation and letters that it would be protected if isolated, he rented a warehouse in which to store it. Fearing that in accordance with recent orders, if the city were closely invested the tobacco would be destroyed, Paul notified Benjamin, May 5, 1862, that reimbursement by the Confederate government at the market price of any tobacco destroyed would not recompense the French government for the delay, inconvenience, and loss, and he preferred to take the risk of its destruction by the Union authorities, who, he believed, would respect neutral property. The secretary denied that he had agreed to any scheme of indemnification, nor would he enter into correspondence concerning the duty of his government in regard to "facts not yet existing," but he finally agreed that if the French tobacco were stored in a special place, under the French flag, the Confederacy would not destroy it "even if exposed in

[1] "Pickett Papers."

[2] Richardson, *ut supra*, Vol. II, p. 189; Jones, "A Rebel War Clerk's Diary," Vol. I, p. 197.

places liable to be occupied by the enemy." [1] This correspondence suggests that already European governments were dubious of the Confederacy's ability to pay its obligations.

Here the matter rested until July 29, 1863, when Paul wrote Benjamin that the Federal government had given permission for the undisturbed passage of the tobacco from Virginia waters. After considerable negotiation Paul secured leave from Benjamin to ship this tobacco from City Point — the customary point of lading for the port of Richmond — on neutral vessels which should proceed directly to some French port. These vessels were not to stop at any port in the enemy's hands nor to take any paper or clearance therefrom, except that they might stop to show their clearances to the blockading fleet.[2]

Another delay was occasioned by the discovery of the Federal government that most of the tobacco had been bought, or at least paid for, after the establishment of the blockade. This entailed an extended correspondence, as it was necessary to secure from England the "waiver of a right to object to this relaxation of the blockade." The Federal authorities were also displeased at the French attitude toward the Confederate ship *Florida*, which received permission to repair and provision at Brest in September, 1863.[3]

Finally, towards the end of April, 1864, the French men-of-war *Tisiphone* and *Grenade*, convoying the British freighters *Bidwell* and *Miller*, came to City Point, that the latter might be laden under the supervision of the former. Paul and Commander Merivault of the *Tisiphone* called at the state and treasury departments, April 23, to say that they had just been notified by General Butler that the time granted in the convention between the United States and France for the exportation had expired, so the ships must depart. Benjamin requested a copy of this convention, which Paul did not have with him, but as he felt sure the time had been extended, he said he would go with the ships, see General

[1] "Pickett Papers." [2] *Ibid.*

[3] Richardson, *at supra*, Vol. II, pp. 563–566; "Dipl. Cor.," Supp. to 1863, Seward to Dayton, Nov. 10.

Butler, and get a copy of the convention. When he arrived at Fortress Monroe he found despatches informing him that the time *had* been extended to August 7.

On the *Bidwell* were about 170 hogsheads of tobacco, which had not passed the Confederate customhouse, because, Paul had said, they expected to return to City Point to finish lading. He secured from General Butler permission for the two vessels to return to "clear the tobacco already shipped." For some reason which he does not make clear, Paul decided that the *Bidwell* could not stand two more trips between Hampton Roads and City Point, so he decided to despatch her from Norfolk and return himself with the *Tisiphone*.[1]

In the letter announcing this decision he evidently sent a copy of the convention of November 23, 1863, between the United States and the French governments. Benjamin found this document "unexpectedly and gravely objectionable," because, he said, though in acceding to Paul's request for the exportation of this tobacco he had taken pains to make it clear that the Confederacy held its sovereignty unquestioned within its limits and would permit no assumption of authority therein by the United States government, this convention contained "stipulations in derogation of the sovereignty of the Confederate government." The convention, he continued, was a recognition by the French of the "pretensions of the United States to a control over the neutral vessels and their crews" while in Confederate ports, which pretensions could not be admitted. Certain articles of the convention seemed to him to allow the United States to control intercourse between the shore and neutral vessels in Confederate waters. Article VIII exceeded all others in offensiveness, he said, as it provided for the recruiting and bringing into her ports on neutral vessels forty enemies of the Confederacy; and Article IX declared that they should be considered as part of the effective crew of the *Tisiphone*. The President and he were unwilling to comment on this document, he went on to say, despite its dis-

[1] "Pickett Papers; Dipl. Cor.," 1866, Vol. III, p. 518; "Off. Recs. (Navy), Ser. 1, Vol. XXIV, p. 392.

regard of the principles of international law, because they felt sure that French functionaries in America had concluded it without consulting the Imperial government, which would, of course, "hasten to disavow" stipulations "so offensive to the dignity and self-respect" of the Confederate government. Meanwhile, the President had instructed him to say that until "the obstacle interposed by the objectionable convention" was removed, no French vessels could be permitted to receive cargoes in Confederate ports.[1]

The consul denied that he or his superiors had intended to agree to anything in the least derogatory to the "dignity or the moral or material interest" of the Confederacy. The convention *had been approved* by the French government, and none of the officials engaged in the negotiations had seen anything in it to offend the Confederate government. The article prohibiting intercourse between the crews and the shore, he said, was inserted at his suggestion, as a measure of neutrality, hence he denied Mr. Benjamin's statement that it authorized the authorities of the United States to "institute a police" in Confederate ports. As to Article VIII, that, he claimed, was not an attempt, nor even an agreement to allow the introduction of alien enemies into the Confederacy, but fearing the need of additional longshoremen, he had suggested getting them at Norfolk, *non pas des ennemis mais des travailleurs*. This had been unnecessary, however, as the seamen detailed from the *Tisiphone* had done all the work.

Benjamin had demanded to know what Paul meant by saying that the force of circumstances had decided him *à faire expédier le Bidwell de Norfolk, etc.* Did this mean that she was cleared from the Federal customhouse; did she take *any* papers at Norfolk? Paul assured him that he and Commander Merivault had given explicit instructions that the *Bidwell* should procure from the French vice-consul at Norfolk the clearance she should have gotten at Richmond; the captain was told not to present himself at the customhouse; to display the French colors at his forepeak and to "permit no intermeddling (*immixtion*) with his affairs

[1] "Pickett Papers."

by the customhouse, either at Fortress Monroe or Norfolk." The secretary of state wrote that this explanation, with the frank avowal of the way in which the 170 hogsheads of tobacco had been despatched, convinced the Confederate government of the sincerity of Paul's acts and intentions in this particular incident.[1]

As to the convention, Benjamin held that the mere fact that such an agreement could be entered into by a neutral government revealed the fact that the French officials at Paris, Washington, and Richmond did not regard the Confederacy as independent even *de facto*. This false conception he attributed to "erroneous views" inculcated by the authorities of the United States and accepted by European governments. There could be no objection, he said, to any precautions, however unnecessary, the French might take regarding the control of their own vessels; what the Confederacy *did* object to was that they bound themselves by agreement with her enemies to observe certain rules in Confederate ports, and to introduce therein, without the Confederacy's consent, inhabitants of the enemy's country. This, he continued, "implies the existence of rights on the part of the United States to exercise powers of government in our territory and is a concession of their pretensions that we are not independent of their control." Would France, he asked, being neutral in a war between England and Spain, have made such an agreement to carry English laborers into Spain; if not, evidently she did not consider the Confederate States as independent as Spain. France need not be surprised, then, at the impression made on the Confederate government by reading the convention, nor that this impression had not been removed by Paul's assurance of the friendly motives of France.[2]

Paul apparently did not answer this despatch. In passing it may be noted that, the previous April, Benjamin had suggested to Slidell the advisability of seizing this tobacco in retaliation for the detention of the Confederate ship *Rappahannock* at the instance of United States Minister Dayton, when she put in at

[1] *Ibid.*

[2] *Ibid.* Richardson, *ut supra*, Vol. II, p. 675.

Calais.[1] Permission to remove the tobacco was again requested in January, 1865. Paul was assured that the Confederate government would interpose no difficulty if the consent of the United States was granted for the passage of the blockade. But to avoid the recurrence of any unpleasantness, such permission from the Federal government must be submitted for the approval of the Confederates. Before another convention could have been concluded — if it was attempted — there was no need for it, and this affair is closed by a note from Benjamin, February 23, 1865, informing Paul that General Lee's order of the previous day anent the removal or destruction of valuables was a precautionary measure to keep property from capture, but the consul was assured that the French tobacco would not be disturbed by Confederate officials.[2]

This tobacco question was at first merely as to whether property, not contraband, bought for a neutral government would be liable to destruction to prevent its capture. But when the attempt to remove it was made, the international status of the Confederacy intruded itself. Though denying most positively its intention to compel any such constructive recognition of its independence as the request for an exequatur might imply, the Confederate government was extremely sensitive whenever a consul or his government, in dealings over which the Confederacy had any control, appeared to ignore its independence or sovereignty. Though it would not make recognition a condition of its consent to the exportation, it would most emphatically refuse to permit that exportation by a nation which appeared to deny its independence.

Like the consuls at Charleston, Mobile, and New Orleans, Paul at various times sought permission for the departure of French citizens who feared conscription if they remained in the Confederacy. Generally, where the Confederate government was willing for the refugees to take ships, the authorities of the United States

[1] Richardson, *ut supra*, Vol. II, pp. 625, 644, 654; "Dipl. Cor.," 1864–1865, Vol. III, pp. 3–48.

[2] "Pickett Papers"; "Off. Recs." (Army), Ser. 1, Vol. XLVI, pt. II, pp. 1247, 1250, Vol. LXVII, pt. I, p. 1044.

refused permission to pass the blockade, and when they were willing for them to pass the military lines, the Confederates were not.[1]

The Charleston consulate was naturally the first to feel the effects of secession, but nothing worthy of our notice occurred there until July, 1861, when M. de Belligny de St. Croix joined his colleague, Robert Bunch, the British consul, in sending W. H. Trescot to Richmond to secure the acceptance of the Declaration of Paris by the Confederacy. The details of this negotiation and its effects have been treated elsewhere;[2] suffice it to say that when Bunch's exequatur was revoked by President Lincoln for this assumption of diplomatic functions, Belligny's part therein was ignored, to avoid giving France and England a common grievance.

Trescot wrote Secretary of State Hunter that when he returned to Charleston he asked Belligny if his successor was instructed to apply at Washington for his exequatur. The Baron Durand de St. André, his successor, was present and said that he had not done so, but had purposely avoided going to Washington on his way South, so that the question would not be raised. He supposed he would wait at Charleston until the time came to ask the Confederate government for his exequatur.[3] In the light of after events, this statement is significant.

In a communication to Congress, in September, 1862, Secretary Benjamin stated that he had recently learned that St. André had assumed consular functions in Charleston since the establishment of the Confederacy, but without asking for an exequatur. St. André had just left Charleston, but should he return, the state department would "repress the offensive assumption of consular functions by a foreign agent" without Confederate leave.[4] St.

[1] *Ibid.*, "Dipl. Cor.," 1864, Vol. III; "Off. Recs." (Army), Ser. 3, Vol. IV, pp. 780, 806; *ibid.* (Navy), Ser. 1, Vol. XI, p. 110, Vol. XVI, pp. 12, 116, Vol. XIX, pp. 642–657.

[2] Bonham, *ut supra*, Chap. II, and references therein.

[3] Richardson, *ut supra*, Vol. II, pp. 55–56.

[4] "Journals of C. S. Congress," Vol. V, pp. 421 *et seq.* When Trescot wrote, Benjamin was attorney-general; he became secretary of war, Nov. 21, 1861; secretary of state, March 18, 1862.

André returned in December, and Benjamin demanded an explanation. The consul replied that as his own functions were merely provisional, while Belligny was in France, he had supposed an introduction by a French naval officer to the local officials all that was needful. Naturally supposing from this that Belligny would soon return, Benjamin permitted St. André to continue as (supposedly) *gerant du consulat.* In May, 1863, however, General Beauregard informed the war department that Arthur Lanen had arrived at Charleston and proposed to act as consul, though he had no permission from the Confederate government to do so. Secretary of War Seddon at once notified the state department, which immediately informed Lanen that before he could assume any official position he must present his credentials. He replied that as the consulate at Charleston was "momentarily deprived of its head" by the departure of St. André, he had been selected to act until "that agent" returned. Therefore he had thought an introduction to General Beauregard as "*gerant intérimaire*" all that was required. Benjamin, however, had received from General Beauregard a copy of Lanen's warrant as acting-consul (*brevet de consul intérimaire*). This document showed that the consul-general at New York, at the order of the French legation, had detailed Lanen from his office to act as consul in Charleston. So Benjamin notified Lanen, June 3, that as his letter was not satisfactory he could not exercise "consular functions in Charleston, whether temporarily or permanently" unless he submitted proper authority therefor to the Confederate government. If not prepared to do so, he might depart, or remain as a private individual.[1]

Thereupon the state department issued a circular, June 10, forbidding direct intercourse between foreign agents in the Confederacy and their colleagues in the enemy's territory. A copy of this, with the correspondence with Lanen, was sent to Slidell, together with an explanation of the grounds on which consuls with exequaturs issued before 1861 had been allowed to continue their duties. How and when St. André's character of provisional consul during Belligny's absence, wrote Benjamin, had been

[1] "Pickett Papers."

changed to that of "consul of France for Charleston" — the title given him in Lanen's *brevet* — was too grave to be dwelt on in detail. He held that the assumption of French functionaries in the United States to exercise power within the Confederacy ignored the existence of the Confederate government and implied that "the relations which formerly existed between those functionaries and French officials in Charleston continue(d) to exist, unimpaired by the secession of South Carolina," the formation of the Confederacy and the war then pending. Of course such an assumption could not be tolerated, hence the inclosed circular, which, he pointed out, would work no hardship because, despite the "paper blockade" which the French government upheld in "derogation of the rights of the Confederacy, of the dictates of public law and of the duties of impartial neutrality," a regular mail and trade were maintained between Confederate and neutral ports. Slidell was instructed to take the matter up with the Imperial government, which evidently placated him and instructed Paul how to do the same for Benjamin, for in December, 1864, the latter informed Paul that his assurance that Lanen was only acting during the consul's absence was satisfactory. He had informed Slidell, already, that the Confederacy could have no "objection to the return of an officer previously established with its acquiescence," so St. André would find no obstacles in the way of his return, and had Lanen simply brought a letter from the consul-general in New York "explaining the circumstances and asking permission to take charge of the consulate until the French government could be heard from," no objections would have been interposed.[1]

Most frequently the consuls addressed the Confederate authorities concerning the enlistment of foreigners in the Southern forces. The attitude of the departments of state, war, and justice, which was upheld by the courts, was that any domiciled foreigner might be compelled to serve, when other able-bodied men were subject to conscription, but sojourners were not liable for anything further than patrol duty and local defense. The courts held that the

[1] *Ibid.* Unfortunately the letters from Slidell and Paul on this subject do not appear.

continued residence of a foreigner in the Confederacy for a twelve-month after hostilities commenced was presumptive evidence of domicile.[1] When a claimant for the protection of the French consuls lived in southern Alabama or Louisiana it was very difficult to determine whether he was native-born or a French subject. The consuls generally gave him the benefit of the doubt and protested against the enlistment of their "nationals" in obedience to the instructions of the French minister at Washington, who had issued a circular in October, 1861, in which he expounded what he considered the international law on the subject and directed the consuls to protect their compatriots. The circular was submitted to Seward, who declined to commit himself concerning its contents until actual cases should arise, and left the minister free to issue any instructions for which he chose to assume responsibility.[2]

One example will serve for all the consulates. The Confederate commander at Mobile issued an order in July, 1863, saying that as the Confederate court for that district had recently ruled that in return for the protection of the law resident foreigners owed a "temporary and qualified allegiance," so permanent residents and domiciled aliens were subject to conscription. Nicholas G. Portz, the French vice-consul, at once sent protests, by mail and telegraph, to the departments of state and war. As was the custom of the consuls, he quoted at length from the legation's circular, and expounded international law freely. Protests were also filed with the local commander and the commandant of the camp of instruction in central Alabama. He took the position that naturalization was the sole proof of domicile, hence these enrollments were illegal, impolitic, and likely to lead to war with France.[3]

The Confederate authorities, on receiving such appeals, examined each case on its merits, and if it appeared that the claimant

[1] For an opinion of the Atty.-Gen, see "Pickett Papers"; for that of the secretary of state, see "Off. Recs." (Army), Ser. 2, Vol. II, p. 786; for judicial opinions, see *Savannah Republican* of July 7, 1863. On this point in general, see Bonham, *ut supra*, Chap. XII.

[2] "Dipl. Cor.," 1863, pt. ii, p. 736 *et seq.*

[3] "Pickett Papers."

was really exempt, he was discharged. If the reports of the enrolling and mustering officers showed that the proofs of his domicile were strong, the consul was told that his client must serve.

When the British minister at Washington dismissed the consul at Mobile, in 1863, for helping the Alabama authorities to export some gold to London,[1] Portz was allowed by Benjamin to act temporarily in his place. Shortly after this Portz asked whether, if he went to France for his health, he would be permitted to resume his functions on his return, and whether the Dutch consul might act for him during such absence. The necessary permission was granted, but before Portz could avail himself of it, he died; whereupon Benjamin directed that the Dutch consul be permitted to take charge of the "books, papers, and property of the consulate, and of those who had made deposits there," but he was not to be "permitted to act generally as vice-consul for France." [2] As the blockade was becoming more effective and foreign warships were being refused leave to communicate with consuls in Confederate ports, no successor seems to have been appointed for Portz until after the war.[3]

Because of the large French population, native and alien, in the state, and because of the commercial rank of the city, the French consul was the most important in New Orleans. It would be as tedious as useless to recount all the petty questions of birth, domicile, residence, allegiance, etc., that caused controversies with Louisiana and with the Confederate and Union officials, consequently one or two of the most significant will have to serve our purpose.

The Comte de Mejan had been consul in New Orleans since 1856, and seemingly had identified himself pretty thoroughly with local sentiment. With his knowledge and advice the *Volontiers Françaises* was formed for local defense in May, 1861. By June it had become the *Legion Française*, and by next spring the various consular guards of the city constituted two brigades, the *European*,

[1] Bonham, *ut supra*, p. 155.

[2] "Pickett Papers."

[3] "Off. Recs." (Navy), Ser. 1, Vol. XV, pp. 143, 180, 316, Vol. XVI, p. 12; *Annuaire Diplomatique* (Paris), 1864–1866.

General Jugé, and the *Française*, General Marignan. They claimed to be composed of non-naturalized aliens, having no political interest in current events, and who wished to retain their nationality, but were willing to do any duty that might be demanded of them in the city limits.[1]

When the Confederate forces withdrew from New Orleans, April 24, 1862, Mejan gave it as his official opinion that these brigades could properly maintain order in the city. This was done, and when the Federal troops arrived, the brigades were requested to remain on duty a few days longer, being relieved from duty by General B. F. Butler, May 6, and soon after they were disbanded. In August, General Butler directed that all arms in the possession of civilians be turned over to the Federal authorities. Mejan protested that such weapons were personal property, not liable to seizure, and might be very necessary in case of a servile insurrection, which he thought the Federal attitude tended to foment. Butler replied that most of these arms were in the hands of former members of the Legion and the Brigades, that few Frenchmen had taken the oath of neutrality suggested by him, and as he had no other test of their sentiments he felt it safer to confiscate all arms, feeling sure that he had troops enough to repress any disorder, servile or other. His attitude towards these foreign commands seems justified in the light of an editorial in the *Delta* of April 30, 1862, and of their own regulations. The former said that those who attributed to the members of the foreign brigades "a want of sympathy with the cause of the Confederate States, or any inclination to countenance, aid or favor the United States [were] guilty of grave injustice." The regulations of the *Legion Française* prescribed an oath for the officers which bound them to "*soutenir, de maintenir, et de defendre la Constitution de l'État et celle des États Confédérés.*" [2]

[1] For this and the next few paragraphs, see "Off. Recs." (Army), Ser. 1, Vol. XV, p. 3, Vols. II, III; (Navy), Ser. 1, Vols. XVI, XVIII; "Pickett Papers"; "Dipl. Cor.," 1862–1865; *N. O. Daily Delta*, *N. O. Picayune*, and *L'Abeille de Nouvelle Orleans*, 1861–1865; Fortier, "History of Louisiana," Vol. IV; Parton, "General Butler in New Orleans."

[2] "Off. Recs." (Army), Ser. 1, Vol. XV, pp. 480–483.

When Flag-officer Farragut demanded, April 27, 1862, that the mayor have the state and Confederate flags on public buildings replaced by the stars and stripes, the mayor called Mejan and other consuls in consultation, as a result of which he refused to comply with the demand. Farragut then said he would send officers to make the change, and if they were molested his fleet might fire on the city at any moment, so he suggested the removal of women and children. The captain of a French warship then in port protested that the forty-eight hours allowed for the removal was too short, while Mejan and seven other consuls demanded a "verbal interview" before "such an unheard of act" should be perpetrated. Farragut disavowed any intention of firing without cause, and as his marines replaced the flags without being disturbed, the cloud blew over.[1] General Butler, whose name is still anathema in New Orleans, assumed command of the department of the gulf, May 1. At first he and Mejan sent rather favorable reports of one another to their respective governments, but each soon changed his opinion of the other.[2]

The consuls of twenty-one powers, led by Mejan (which was frequently the case), protested, May 21, against Butler's forcible entry of the Dutch consulate and the seizure of the papers and valuables therein. The general asserted that the consul had been debauching his seal and flag. As a result of this and similar actions of the general, the French, British, and Dutch legations appealed to the Federal state department, which appointed Reverdy Johnson, special commissioner, to proceed to New Orleans and investigate all such matters. The war department detailed General Shepley as military governor, in the vain hope that such protests would no longer be necessary.

Another joint protest was called forth by Butler's order of June 10, requiring certain oaths as prerequisites to civil privileges. American citizens, who were described as all persons residing in

[1] *Ibid.* (Navy), Ser. 1, Vol. XVIII, pp. 230–241; Johnston and Buel, "Battles and Leaders of the Civil War," Vol. II, pp. 95–96.

[2] "Dipl. Cor.," 1862–1863, pt. i, p. 420; "Off. Recs." (Army), Ser. 1, Vol. XV, p. 479.

the United States for five years without claiming foreign protection, were required to take the oath of allegiance; foreigners, to take an oath to do no act hostile to the United States nor conceal any that had been done or was about to be done. The consuls asserted that their nationals could neither transact business in the city nor get a passport to leave it without taking an oath which would make them violate their neutrality by acting as spies. The general ridiculed their arguments and requested that no more joint "argumentative protests" be sent him.

Next day he received another from Mejan and the Greek and British consuls concerning his seizure of 3200 hogsheads of sugar, the property of their compatriots. Butler regarded the purchase of this sugar as a subterfuge for conveying funds to Europe to purchase supplies for the Confederacy, hence the seizure. When Reverdy Johnson arrived, after investigating the matter, he reported that the sale was a *bona-fide* commercial transaction, and Butler was instructed to release the sugar. Parton thought that Seward and Johnson, to thwart Butler and curry favor in Europe, would accept any plausible statement.[1] No doubt they were sometimes deceived, but Butler's arbitrary measures more than counterbalanced this, though he was correct in thinking that several transactions were for the benefit of the Confederacy.

There were numerous other cases in which he impressed printing paper, imposed excessive customs duties, seized blankets from warehouses, even money deposited in consulates. In most of these cases commissioner Johnson's decision was against the general. The case of Charles Heidseck, of the famous champagne house, was rather unusual. He had come to Louisiana to collect some debts, but appears to have entered himself as a bar-tender on the despatch boat between Mobile and New Orleans for the purpose of smuggling letters through the lines. Learning of this, Butler sent him to prison. Mejan appealed to Butler in vain, after which he protested to Washington. Butler reported that he had, in response to the petition of French residents in New Orleans, offered to release Heidseck if he would promise to return to Europe

[1] "General Butler in New Orleans," p. 385 *et passim.*

until the war was over. This he refused to do, and Mejan went to Washington on Heidseck's account. Soon the war department ordered Butler to release Heidseck if he would give his parole not to visit the Confederacy. His claim for reparation for the indignity and hardship he had undergone was apparently dismissed.[1] Butler suspected Mejan of being in collusion with Heidseck, and was so disagreeable that the French legation induced the war department to instruct him to treat the consul with more respect. About this time, he was gratified to return to Mejan some letters the latter seems to have tried to smuggle through the lines.

Shortly after Mejan's return from Washington, his downfall occurred. The United States minister to Belgium wrote Seward in September, 1862, that various European dealers were unable to get their pay for cloth sold the Confederate government, because the money, deposited in the French consulate, had been sequestrated by Butler. This letter was given the war department for transmission to Butler, who at once began an investigation which revealed that certain New Orleans firms with correspondents in France had contracted to deliver military cloth to the Confederate government. At the approach of Farragut's fleet they had withdrawn the money from the banks and deposited it in the French consulate. Dummy bills and receipts made it seem that the money belonged to French citizens. On taking command of the city, Butler had sequestrated all the money in the consulate. Johnson, as commissioner, finding all the documents seemingly correct, directed its restoration. Butler's "secret police" discovered that apparently Mejan had been cognizant of all the details of this proceeding and had connived at the shipment of the coin through the blockade. His wife and one of his clerks had received "presents" for "bringing the affair to a good end." These data were all sent to Washington, and it is not surprising to read in the *New York Times* of January 19, 1863, under the caption "Count No Account" that the French minister had dis-

[1] "Off. Recs." (Army), Ser. 1, Vol. XV, p. 532; Ser. 2, Vol. III, pp. 423–425, 534, 674.

missed Mejan.[1] Nothing further of moment occurred in this consulate.[2]

Benjamin Théron, French consular-agent and Spanish vice-consul at Galveston, attracted no attention until 1862, when he concentrated enough to secure his dismissal. He wrote Governor Lubbock, of Texas, August 18, asking confidentially whether the annexation of Texas to the United States was a good political move, whether the secession of Texas and its entering the Confederacy was wise, whether the reëstablishment of the republic of Texas would be beneficial. The governor answered emphatically in the affirmative to the first two, and no to the third, question, and sent a copy of the correspondence to Richmond.[3] Théron had alleged that he wished this information to guide him in his "political correspondence" with Paris and Madrid. This, with the fact that, on October 13, Senator Oldham of Texas received a similar letter from Tabouelle, chancellor of the French consulate in Richmond, so aroused the suspicions of Davis and Benjamin that they notified Théron and Tabouelle to depart immediately and not to return without permission of the Confederate executive. Benjamin wrote Slidell that it looked like a preconcerted attempt to stimulate the secession of Texas from the Confederacy in order to provide a weak buffer-state between Mexico and the Confederacy or else to secure a regular supply of cotton by establishing a French protectorate over Texas. This despatch was captured and published in Northern newspapers. On reading it, the French foreign minister told the American minister that he would censure the two agents for presuming to interfere in political matters.[4]

In connection with the tobacco transactions at Richmond, this

[1] *Ibid.*, Ser. 2, Vol. III, pp. 677–678, 767–779.

[2] But see *L'Abeille*, Sept. 19, 1862, Sept. 23, Oct. 3, 1863, March 3, 1865, and *N. Y. Times*, July 4, 1863, for some of the routine matters between the consulate and state, and between the Union and Confederate authorities.

[3] For this incident see "Pickett Papers"; Butler, *ut supra*, pp. 295–299; Rhodes, Vol. IV, p. 346; Richardson, *ut supra*, Vol. II, p. 334; Callahan, "Diplomatic History of the Southern Confederacy," 204; Moreau, "La Politique Française en Amerique" (Paris, 1864).

[4] But see Jones, *ut supra*, Vol. I, p. 244, and the Paris *Moniteur* as copied in *L'Abeille*, March 10, 1863.

suggests that perhaps the avowed friendship of Napoleon III for the Confederacy requires an "economic interpretation." Had cotton been a government monopoly in England, would Palmerston have recognized the Confederacy, despite his dislike for Gladstone? [1]

Tabouelle succeeded in convincing Benjamin that he was innocent and ignorant of any intrigue, consequently the order of dismissal was revoked in his case. The letter for Théron was sent by General Magruder, then leaving Richmond to take command at Galveston. He was requested to see that the order was obeyed, but wrote, November 28, to know if it had been rescinded. Benjamin replied that no change had taken place as regarded Théron, and if he refused to go, Magruder was to put him out without undue harshness.[2]

Meanwhile, Théron had protested against Magruder's order stopping communication between Galveston Island and the mainland, and had also addressed Commander Bell, of the blockading forces. Signing himself still, as French consular-agent and Spanish vice-consul, January 11, 1863, he denounced Bell for firing on the city the previous day; this act, he said, was without precedent in history, unless a similar act of Captain Alden, another Federal naval officer, be counted. Bell replied that he had not fired on the *city*, though some of the shots fired at the Confederate defenses might have gone wild. He thought Théron's allusion to Alden "might have become the open enemy of the United States, but not the consular-agent of friendly neutrals." A week later he refused Théron's request that a provision ship might pass the blockade for the exclusive benefit of foreigners in Galveston. Théron had some further correspondence of little moment with Bell, whom he informed, February 8, that Mr. Davis had ordered him to depart, which he would do as soon as a French warship came. He sent the names of two citizens of Houston who would assume his duties when he left.[3]

[1] *Cf.* C. F. Adams, in "Proceedings of Mass. His. Soc.," Ser. 2, Vol. XX, p. 453.
[2] "Pickett Papers."
[3] "Off. Recs." (Navy), Ser. 1, Vol. XIX, pp. 545, 550, 639.

As late as March 23, 1863, Bell wrote to Farragut that Théron was abusing his consular seal, and added that he should be glad when "so great a pest is out of the land." I find no further reference to Théron in any documents accessible to students. Probably he continued to wait for a warship, and as long as he kept quiet, Magruder was no doubt oblivious of his existence.[1]

In conclusion, it may be repeated that though the French consuls were in general friendly to the South, they did not hesitate to protest as vigorously against the infringement of their compatriots' privileges by the Confederate as by the Federal authorities. While some individuals offended the Confederate government (Lanen), or the Federal (Mejan), or both (Théron), they were not as a class unpopular with either belligerent.[2] On the whole, they discharged their difficult duties as well as the circumstances permitted, with occasional departures from strict law of neutrality in favor of the Confederates.

[1] *Ibid.*, Vol. XX, p. 99.

[2] For the difference in Southern sentiment towards French and British consuls, see the *Richmond Whig*, Oct. 5, 1863.

V

THE JUDICIAL INTERPRETATION OF THE CONFEDERATE CONSTITUTION

By SIDNEY D. BRUMMER, Ph.D.

V

THE JUDICIAL INTERPRETATION OF THE CONFEDERATE CONSTITUTION

In the provisional constitution of the Confederate States, the article dealing with the judiciary provided for district judges, a quorum of whom sitting together should constitute a supreme court.[1] The Confederate Congress accordingly passed the act of March 16, 1861.[2] However, as is well known, the district courts alone were established. Before the date set for the first meeting of the supreme court (January, 1862), Congress enacted in July, 1861, that until organized in accordance with the permanent constitution, no session of that court should be held.[3] It seems not unreasonable to suppose that the desire to present to the world a complete government had been laid aside amidst the all-absorbing demands of the war, and that the need of a supreme court in July, 1861, was not felt to be pressing.[4]

In the permanent constitution, a judicial system similar to that of the United States was authorized. While the district courts continued as before, it was not until January, 1863, that any step toward the establishment of a supreme court was taken. Then a bill to create such a tribunal was introduced by Senator Hill of Georgia.[5] The date and the sponsor of the measure may well be considered significant. When the conscription act was in course of passage during the previous year, its constitutionality had been assailed in the debates in Congress, and by the beginning

[1] Davis, "Rise and Fall of the Confederate Government," Vol. I, p. 646.

[2] J. L. Matthews, Confederate Statutes at Large, p. 75.

[3] *Ibid.*, p. 168.

[4] *Cf.* Hon. J. A. Orr in "Southern Historical Association Publications," Vol. IV, pp. 96, 98.

[5] Journal of the Congress of the Confederate States, Vol. III, p. 20.

of 1863 cases involving the law's constitutionality had already been brought before the highest state courts. Though their decisions upheld the power of the Confederate government, the latter was threatened with a danger which might at any time become immediate. Senator Hill was a supporter of the Davis administration, while the leader of the opposition to his bill was Yancey, who had quarreled with the President on other matters.[1] There still remained on the statute book those sections of the judiciary act of 1861 which gave to the supreme court appellate jurisdiction over cases decided in the highest court of any state, where there was drawn in question either the validity of a state statute on the ground of its being repugnant to the Confederate constitution, treaties, or laws, or the validity or construction of the Confederate constitution, treaties, or laws. Accordingly, an amendment to Hill's measure, repealing these sections of the act of 1861, was proposed by Senator Clay of Alabama.[2] After debates extending over a number of days,[3] the amendment was adopted; and the bill, thus providing a tribunal to hear appeals merely from the lower Confederate courts, was passed.[4] However, it failed in the house.[5] The nature of the amendment as well as what little we know of the arguments against the bill[6] confirms the later reminiscences[7] of men connected with the government that fear of centralizing tendencies, past experience under the Federal Supreme Court, and a desire to protect states' rights led to the failure to establish a Confederate Supreme Court.

Thus, the decisions of the highest tribunals of the several states on constitutional questions had an importance in the South

[1] Du Bose, "Life of Yancey," pp. 676, 700 *et seq.*, 739.

[2] Journal of the Congress of the Confederate States, Vol. III, p. 38.

[3] *Ibid.*, pp. 42, 44, 46, 47, 48, 50, 53, 172, 174, 176.

[4] *Ibid.*, pp. 176–177.

[5] *Ibid.*, Vol. IV, pp. 190, 319–320, 357. Du Bose (p. 712) attributes the failure of the bill in the house to opposition to John A. Campbell becoming chief justice.

[6] "Southern Historical Association Publications," Vol. IV, pp. 85, 86; Du Bose, p. 702 *et seq.*; Schwab, "The Confederate States of America," pp. 219, 220 (based in part on newspaper reports of the time).

[7] *Ibid.*, pp. 92, 93, 94, 99, 100.

which they could not have had in the North. Even in the latter section, certain cases in the courts of the individual commonwealths [1] were not without significance in connection with the growth of the opposition to the administration. The Southern cases are noteworthy not only in that respect, but also as authoritative interpretations of the Confederate constitution. "In a community where the sovereignty of the States was a cardinal doctrine," says Rhodes, "these determinations of state courts carried more weight probably than would those of a high Confederate court." [2] Moreover, they merit examination as material for the history of the war measures of the Confederate government.

The most important laws whose constitutionality was passed upon during the war by the highest court of a Southern state were those dealing with conscription. The act of April 16, 1862, empowered the President to place in the Confederate service for three years, unless the war should terminate sooner, all white male residents between the ages of eighteen and thirty-five who were not legally exempt.[3] By the act of September 27, 1862, the calling out of those between thirty-five and forty-five years was similarly authorized.[4] Conscription in the South was soon followed by drafts in the North, and in both sections serious opposition ensued. In both, the opponents of compulsory service challenged its validity on like grounds. In the North, Governor Seymour demanded the suspension of the draft until the constitutionality of the law providing for it could be determined by the United States Supreme Court. In the South, the parallel question was brought before the highest tribunals of Georgia and of Texas toward the close of 1862, and somewhat later before the supreme courts of Virginia and North Carolina.

In the Georgia case of Jeffers *v.* Fair,[5] counsel argued that the Confederate Congress could raise armies only by volunteering or by calling forth the militia, that compulsory military service was virtually doing the latter without permitting the states to exercise

[1] 45 Penn. 240, 21 Ind. 370, 22 Ind. 282, 16 Wis. 382.
[2] "History of the United States," Vol. V, p. 433.
[3] Statutes at Large, p. 30. [4] *Ibid.*, p. 61. [5] 33 Ga. 347

their constitutional right of appointing the officers, and that the law was repugnant to state sovereignty and might be made subversive of state governments.

To the first of these contentions, the Georgia court replied that the power of Congress to raise and support armies was unlimited except that appropriations therefor must not be for more than two years. "Language could not express a broader, more general grant of a specific power," said the court. Even if that particular clause did not confer power to conscript, the "necessary and proper" clause did whenever voluntary enlistment should fail or produce an inadequate number of troops. Nor must Congress await such an eventuality. Promptness was essential, and Congress was judge of the necessity.

Because those conscripted had been previously enrolled in the militia, their status as citizens was not destroyed, nor were they exempt from their obligations as such. If the members of the militia could not be compelled to enter the Confederate service, they could not be attracted to volunteering for it by bounties and wages, and consequently the government would be unable to raise any army. Nor was the law opposed to state sovereignty and an infringement of the reserved powers of the states. The latter individually were incompetent to manage external relations, and hence that subject with the necessary powers was given to the Confederate government. The constitution of the Confederacy was, in the main, a copy of that of the United States. "The experience which induced its adoption was our experience." The great defect of the articles of confederation lay in the military and financial weakness of Congress. The intention of the people in adopting the constitution of the United States was to transfer to Congress the complete power to raise armies, and this end would not have been accomplished had not compulsory service been included, as the power to raise revenue would have been defective without the right of enforcing payment. The people of the Confederate States, having been taught by the Hartford Convention that "refractory governors and recusant States were at least possibilities," and having in

mind past experience as well as the impending war, adopted the same clause in their fundamental law. Nor could the power to conscript subvert the state governments. For the Confederate Congress had no power to demand such service from the officials of any state. The court unanimously affirmed the judgment of the court below, refusing to discharge the petitioner from the custody of the enrolling officer.

The Georgia case was typical. The same arguments were later presented in the other states and similarly answered. The Texas decision, *ex parte* Coupland,[1] quoted Vattel to show that the power of making war necessarily included, unless expressly withheld, the right to demand compulsory military service from citizens. "If this right is an incident of the prerogative of making war in a monarchy, where the people can exercise no control over the sovereign, how much more readily should we conclude that it was a 'necessary and proper' implied power with us, when the war-making power is given directly to the agents of the people, who can only be supposed to act under their directions and to speak their sentiments, . . ." One of the three members of the Texas court, however, dissented, finding the conscription law unconstitutional. Vattel's principles, he declared, had no application to countries with written constitutions. As to the "necessary and proper" clause, he claimed that the question was not "whether or not the power to raise and support armies is expressly granted; the question is, whether or not the power to raise armies by conscription is expressly granted." It was not impliedly conferred, for the experience of both the United States and of the Confederate States had demonstrated that armies could be created by voluntary enlistment, and hence conscription was not a necessary means. If inability to compel military service made the Confederacy weaker in war, that government was not instituted with a view to the highest possible efficiency in that respect. The distinction between the citizen's and the militiaman's duties was pronounced a hollow sophism.

In the Virginia case,[2] it was further objected that a power to

[1] 26 Tex. 387.

[2] Burroughs *v.* Peyton, 16 Va. 470.

conscript would be despotic in its nature, endangering the personal liberty of every citizen. The court, while acknowledging that the power was a transcendent one, declared that without it neither liberty nor national life could be preserved. The real question was not whether it existed, but where it was lodged; whether it had been conferred upon the Confederate government or retained by the states. The court found the answer by inquiring to which the duty of defense had been committed. Counsel maintained that since no objection had been made to the corresponding clause in the constitution of the United States when that instrument was adopted, the granting of so great and dangerous a power was not suspected. The decision in reply quoted the "Federalist" to the contrary; moreover, it was well known at the time of the framing of the Confederate constitution that many statesmen, including some from the South, had asserted that the power to compel military service belonged to the government of the United States. In rejecting the argument that the power did not exist because liable to abuse, the court pointed to the responsibility of Congress to the people and to the reserved right of each state to resume that which it had intrusted to the common agent. Then, it was contended that the law was unconstitutional on the ground that the power of raising an army had not been exercised by Congress itself, but had been delegated by it to the President. The court denied this. The executive had been merely authorized to place in the field the army raised by law, being given discretion to call out from time to time, according to exigencies, those legally conscripted.

The question of the constitutionality of the act of January 5, 1864, terminating the exemption from military service of those who had furnished substitutes,[1] was involved in cases brought before the supreme tribunals of five states. One of the judges commented upon the "disquietude" which the subject had caused in the public mind. The Virginia case of Burroughs *v.* Peyton[2] partly turned on this point. Here, as in the other states, it was argued that the government by accepting a substitute had entered

[1] Statutes at Large, p. 172. [2] *Supra.*

into a contract with the conscript, whereby the latter should be excused from military service during the term of the substitute, and that the law was unconstitutional in that it violated a contract. The opinion pointed out that the clause of the constitution referred to was a prohibition upon the states and did not limit the power of Congress. As to how far the latter might violate a contract in the absence of a specific grant to that effect, the court declared it unnecessary to decide. But even if a valuable consideration had been paid directly to the government for the privilege of offering a substitute, Congress had the right to end such exemption whenever it judged that the country required the services of the conscript. Congress had no power to contract that any person liable to military duty should be freed therefrom for any fixed period under any call for troops. "No right," the decision read, "has been conferred on the government to divest itself, by contract or otherwise, of the power of employing, whenever and as the exigencies of the country may demand, the whole military strength that has been placed at its disposal." The court, citing Butler *v.* Pennsylvania, further held that in accepting a substitute, no contract within the meaning of the constitutional clause had been made. Permission to offer a substitute was an act of grace and a privilege. And the statute itself, it was held, when fairly construed did not grant exemption under future laws. Nor was the act unconstitutional because it made no provision for compensating those whose liability to service was thus revived; in view of the fact that there was no contract, no compensation was legally due.

The same arguments were raised in Alabama, and were similarly dealt with.[1] Here, both the act of January 4, 1864, and that of February 17, 1864, which latter repealed all previous exemptions (including those for reasons other than furnishing a substitute) were held constitutional. One of the three members of the supreme court, however, dissented.

Three cases [2] involving the same point came before the Georgia

[1] *Ex parte* Tate, 39 Ala. 254.

[2] Daly *v.* Harris, Fitzgerald *v.* Harris, Harwell *v.* Cohen, 33 Ga. 42.

supreme court after conflicting judgments as to the unconstitutionality of the law of January 4, 1864, had been rendered by inferior tribunals. The Georgia decision traversed the same ground and reached the same conclusion as that arrived at in Virginia and Alabama. In Georgia, the additional contention that there had been a contract between the conscript and his substitute was raised. The court disposed of this by holding that if, as already decided, exemption was a privilege revocable at the pleasure of Congress, one furnishing or becoming a substitute ought to have understood this condition when the agreement was made.[1]

In North Carolina, Chief Justice Pearson, sitting in vacation, decided that a binding contract arose between the government and the conscript when the latter supplied a substitute and received a discharge, and that the act of January 4, 1864, was unconstitutional.[2] He held that under such circumstances there were parties capable of contracting, that there was a subject of contract, and that "'Gain to one and loss to the other party, is a legal consideration.'" While it was true that substitution was a privilege, it was conceded for a price paid. He also held that Congress had no power to violate a contract, since the constitution neither expressly nor impliedly contained such a grant. Answering the plea based on the safety of the state as the supreme law, the chief justice asserted that "The constitution being written, can neither bend or stretch, even in a case of extreme necessity." As to the alleged inability of Congress to contract away the services of any able-bodied male, Congress might choose that means to permit the citizen to remain at home that he might raise food and supply clothing "to support the army," while filling the ranks with substitutes who were foreigners and not liable to military service. The case was brought on a writ of *certiorari* before the North Carolina supreme court. That body, by a vote of two to one, reversed the decision of the chief justice, the latter dissenting.[3]

[1] Affirmed in Swindle *v.* Brooks, 33 Ga. 67.

[2] *Ex parte* Walton, 60 N. C. 350.

[3] Gatlin *v.* Walton, 60 N. C. 325.

In the Texas case,[1] the supreme court of that state held that even if the acceptance of a substitute did establish a contract, the clause in the Confederate constitution prohibiting the impairment of the obligation of contracts applied only to the states and not to the Confederate government. To an argument that since the latter was the creature of the states, it could not impair the obligation of a contract because the states could not, the court replied that both Confederate and state governments derived their powers from the people, that the constitution and the laws of the Confederate States were the supreme law of the land, and that they were in no sense dependent on the constitution of a state for their authority. As in the other states, it was held that the contracts referred to in the Confederate constitution did not include the granting of a privilege such as exemption, which was in the nature of legislation rather than of compact. Counsel contended that the statute was unconstitutional in that it made no provision for refunding the sum paid to the substitute, thereby taking private property for public use without compensation. But the court held that one power of Congress could not be limited by restrictions on another designed for a different object. Nor did the decision admit that the government was a party to the contract between the principal and the substitute. And as in other states, it was held that the law showed no intention to grant irrevocable exemptions.

From the inauguration of the policy of conscription, the Confederate statutes exempted certain officials of the states.[2] To avert friction,[3] Congress in the act of May 1, 1863, provided for the exemption of "all State officers whom the Governor of any State may claim to have exempted for the due administration of the government and laws thereof"; but such exemption was not to extend beyond the close of the next regular session of the legislature unless the latter by law confirmed the governor's action.[4]

[1] *Ex parte* Mayer, 27 Tex. 715.

[2] Acts of April 21, 1862, and October 11, 1862, Statutes at Large, pp. 51, 77.

[3] In the matter of Bradshaw, 60 N. C. 382; Letter of Governor Vance in Dowd, "Life of Vance," p. 80.

[4] Statutes at Large, p. 158.

The act of February 17, 1864, vested in the executive of each state the right to exempt officers necessary for its government.[1] These concessions gave rise to wholesale evasions of compulsory military duty. The extent to which exemption on this score was carried was therefore a matter of some interest.[2] Not only were the courts called upon to interpret the provisions of these acts, but in Georgia, North Carolina, and Virginia, constitutional questions were raised.

After enrolment in the Confederate army, did election and qualification as a state official entitle a man to exemption? The Georgia supreme court in 1864 decided that it did. The office involved was that of justice of the peace, to which one Strong was chosen while detailed by the war department, after enrolment, as overseer of his plantation. The court, after interpreting the law to the effect that enrolment was not synonymous with being in the service, emphasized in sweeping language the right of a state to elect its citizens to offices necessary for the government thereof and of citizens to fill such offices, as paramount to the right of the Confederate government to their services. This decision was based on the guarantee of republican government to each state. "All powers, therefore, granted to Congress, must be held and exercised by it in subordination to this obligation, and an act or exercise of a power detrimental to these rights, or having a tendency thereto, must be regarded as a mere nullity, . . ." [3] One of the three members of the court, Judge Jenkins, dissented. In a later case [4] involving the office of constable, he, along with Judge Lyons, arrived at a contrary conclusion. But here, the conscript had been actually in service when elected, and the judge who changed sides put the distinction in part upon that ground.

On the other hand, the North Carolina supreme court decided

[1] Statutes at Large, p. 211.

[2] Rhodes, "History of the United States," Vol. V, pp. 435, 446; War of the Rebellion Official Records, Ser. IV, Vol. III, p. 851; Schwab, "The Confederate States of America," p. 197; Jones, "A Rebel War Clerk's Diary," Vol. II, pp. 305, 332; Fleming, "Civil War and Reconstruction in Alabama," pp. 96 footnote, 100, 107. The number of state officials exempted was nearly 19,000.

[3] Andrews *v.* Strong, 33 Ga. 166.

[4] White and Bonham *v.* Sellars, 34 Ga. 200.

that enrolment prior to appointment to office placed one in military service. The opinion declared that it was equally unconstitutional for a state to take away persons in the service of the Confederate government as for the latter to deprive a state of its officials; and that this was especially true with reference to the withdrawal of a soldier from the army because of the supreme powers and duties of the Confederate government in respect to war.[1]

In a later case,[2] this position was affirmed with a fuller examination of the constitutional relations of the states to the Confederacy as to this subject. The court declared emphatically that the power of Congress to raise and support armies was plenary with the two exceptions that state officials necessary to the administration of their respective governments were exempt, and that appropriations must not be for more than two years. The Confederate government was "founded upon the state governments as sovereigns, and cannot exist without them. The superstructure must fall when its pillars are taken away or destroyed. But the case is reversed when the Confederate government, in the exercise of its rightful supreme war power, conscribed into its service a man who is not an officer of the state, and the state is attempting to take him out of it, by electing him to an office." The citizen owed a duty to both governments, and in the event of a conflict must obey that which was prior in asserting its claim.

It must be observed, however, that in both of these North Carolina cases, the offices concerned were of a minor nature [3] not specifically established by the state constitution. In the second case, the court said that had the office been one recognized in the constitution "as essential to the government," the plea of the petitioner would have been "much stronger, perhaps irresistible. The constitution declares, in express or necessarily implied terms, that there shall be a governor, judges of the supreme court, justices of the peace, a sheriff, a coroner or coroners and constables in

[1] Smith *v.* Prior, 60 N. C. 417.

[2] Bridgman *v.* Mallett, *ibid.*, 500.

[3] Watchman in the town of Salisbury in the first and county register in the second.

each county; a secretary of state and several other officers; also members of both houses of the general assembly; and it may be that with respect to all these the state never surrendered the right to have the offices and places filled by any of her citizens, whether they should be, at the time of their election, in the service of the general government or not."

From this decision, Chief Justice Pearson dissented, upholding the right of the state to fill any of its offices with any of its citizens. He contended that all necessary offices could not well be enumerated in the state constitution; that instrument accordingly empowered the legislature to create such additional ones as it should deem necessary; and the latter were equally essential to the government of the state as the former. As for the argument based upon priority, it was contrary to the principle that the war power of the Confederate States was subservient to the reserved rights of the states as regarded their officials.

In a previous case,[1] the North Carolina supreme court decided that the Confederate Congress had no power to vest in the executive of a state the exclusive right to determine which state officers were necessary for the proper administration thereof and accordingly exempt, as provided in the act of February 17, 1864.[2] The court held that designation by the legislature was sufficient. That body, in an act of May 24, 1864, "demanded" the exemption of the mayor and police of Raleigh and some other officers. Had the legislature "the right to 'demand' these exemptions?" the court asked. "It is very decidedly our opinion that it has and that it has it, to the exclusion of every other department of the state government." While the legislature might appoint the executive as its "agent to certify its decision," the Confederate Congress had no power to confer upon the governor authority to make such determination.[3]

[1] Johnson *v.* Mallett, 60 N. C. 410. [2] Statutes at Large, p. 211.

[3] The Virginia case of Burroughs *v.* Peyton (*supra*), so far as the point dealt with above is concerned, simply laid down that Congress had no power to conscript an official necessary to the government of the state, and the sole right of the state to judge what officials were necessary.

The parallel question of whether a state might compel tax assessors and collectors appointed by the Confederate government to serve in the state militia, called out by the governor to repel invasion, was involved in two Georgia cases.[1] The court held that a state had no such power over Confederate officials, duly appointed under a constitutional law and actually engaged in performing their duties; neither a state nor the Confederate States might obstruct the governmental machinery of the other. Moreover, even if such officials were liable to serve in the militia, the Confederate revenue acts and the statute of Georgia dealing with the militia were in conflict; and by the terms of the Confederate constitution, that instrument and the laws made in accordance therewith were the supreme law of the land. McCulloch *v.* Maryland, Houston *v.* Moore and Osborne *v.* The United States Bank were cited. "If, in the unguarded exercise of power by either (Confederate or state government)," said the court, "conflict ensue, there can be no difficulty in determining which shall yield."

Vitally affecting the relations of the Confederacy and the commonwealths which composed it was the question of whether the courts of the latter had the right to take jurisdiction by writs of *habeas corpus* in cases of detention made under the authority of Confederate laws. Two of the three judges of the Alabama supreme court in January, 1863, upheld such a power where the petitioner claimed that he was not liable to conscription because he was under or over age, not a white man or a resident of the Confederacy, or of a class exempted by Congress. Where, however, one was detained by the Confederate authorities, acting within their proper scope, their decision could not be examined by means of a writ of *habeas corpus* issued by a state judge.[2] Chief Justice Walker dissented in an elaborate opinion, wholly denying the jurisdiction of the state courts in all cases of that kind. He maintained that such a power in a state tribunal would subject to its

[1] Cobb *v.* Stallings; Baldwin *v.* West, 34 Ga. 72.

[2] *Ex parte* Hill, *in re* Willis, Johnson and Reynolds *v.* Confederate States, 38 Ala. 429; affirmed in *ex parte* Cain, 39 Ala. 440.

control the officers of the Confederacy, acting wholly within the authority conferred upon them by the Confederate laws. Thus, a minority might successfully prevent the execution of a statute for the raising of revenue or of armies, and the Confederate and state governments might be brought into conflict. The history of the fugitive slave law showed the evils of subordinating the authority of Federal officers to that of the state courts. Admitting that the precedents in those tribunals were not harmonious, the chief justice cited in support of his contention the decisions of the United States Supreme Court in Ableman *v.* Booth and United States *v.* Booth.

In another Alabama case,[1] it was held by the same majority that a state judge had power to decide whether a substitute had been accepted by the Confederate government, whether the conscript was thereby discharged, and whether the effect of such discharge under the Confederate statutes was to exempt him; that these were mere questions of fact or law, not involving the correctness of the acts of a Confederate officer within his legal authority.

The same court, however, decided that the determinations of Confederate officials as to fraudulency of substitution were not reviewable by a state tribunal. For if they were, such courts would have appellate jurisdiction over Confederate officers acting wholly within the scope of their authority. Erroneous exercise of rightful authority could be redressed only through the organs of the government "which created the officer and vested him with his functions." [2]

In North Carolina, the right of state judges to release by means of writs of *habeas corpus* those unlawfully held by Confederate officers was dealt with in a decision rendered in June, 1863.[3] The secretary of war, through Governor Vance, denied this jurisdiction. Many applications for writs in such cases were pending at the time, and so the court assigned a day to hear arguments, the President of the Confederate States being informed thereof in

[1] *Ex parte* Hill, *in re* Armistead, 38 Ala. 458.
[2] *Ex parte* Hill, *in re* Dudley, *ibid.* One of the three judges dissented.
[3] In the matter of Bryan, 60 N. C. 460.

advance. Counsel went into the matter elaborately. Mr. Strong, district attorney of the Confederate States, argued that the true question was "has a state court the right, by a writ of *habeas corpus* or otherwise, to interfere with and thwart officers of the Confederate States acting in the exercise of authority under a law of that government?" He claimed that such a right would be incompatible with the powers vested in the general government and would tend to bring it into contempt. A clash between it and the states might ensue. The suspension of the writ of *habeas corpus* would be rendered a nullity. Recourse to the Confederate courts being open, application to those of a state was unnecessary.

When the decision was finally pronounced, the court not only upheld its jurisdiction in such cases, but also declared that it ought not "to be influenced by considerations growing out of the condition of the country." The opinion, written by Chief Justice Pearson, asserted that the power had been conceded by the courts of the United States. As for Ableman *v.* Booth, that decision did not deny the concurrent jurisdiction of the state courts; and while the language of Chief Justice Taney might be interpreted to the contrary, that was mere *obiter*. The argument that a suspension of the privilege of *habeas corpus* would be valueless if the state tribunals could issue the writ in behalf of those detained by Confederate officers was answered by pointing out that since the laws of the Confederate Congress made in pursuance of the constitution were the supreme law of the land, state judges would be bound by such suspension equally with Confederate judges. Long after the war, Governor Vance boasted that "No man within the jurisdiction of the State of North Carolina was denied the privilege of the writ of *habeas corpus*." [1]

The supreme court of Georgia came to the same conclusion as that of North Carolina.[2] The decision held that the jurisdiction over cases arising under the laws of the Confederate States, granted to the courts thereof by the constitution, was not an

[1] Dowd, "Life of Vance," p. 453.
[2] Mims and Burdett *v.* Wimberly, 33 Ga. 587.

exclusive one. Under the constitution of the United States, the right of the Federal judiciary to try controversies between citizens of different states had always been construed as giving to the plaintiff the choice of suing in either Federal or state court. The jurisdiction of state tribunals in these *habeas corpus* cases would not result in a conflict between the state and Confederate governments, for the principle of priority would avert a clash. Further, the judges of state courts must have the right to interpret and apply the laws of the Confederacy, since they were bound by them. "This obligation resting upon the judges of the states," the opinion read, "removes any well-founded apprehension that they will unduly restrict or hinder the Confederate government in the exercise of its proper functions." [1]

During the year 1864, the advance of the Union troops into the South gave rise to the calling forth of the militia, and in connection therewith to a number of cases involving constitutional questions. In Georgia, North Carolina, and Alabama, the supreme courts passed upon the liability of one exempted from service in the Confederate armies by Confederate authorities, to service in the state militia. Those concerned were "bonded-exempts," *i.e.* overseers of plantations who were bound to furnish to the Confederate government certain quantities of provisions. Under the law of February 17, 1864, the owner or overseer of a farm or plantation having at least fifteen able-bodied field hands between specified ages might be exempt, provided that there was on the plantation no other white adult subject to conscription and that bond was given that the exempted person would deliver within the ensuing year one hundred pounds of bacon or pork and one hundred pounds of beef for each able-bodied slave within the age limits on the plantation. This meat was to be paid for at prices determined by the commissioners under the impressment act. Further, the bonded-exempt agreed to sell to the government or to the families of soldiers surplus provisions and grain at prices fixed in the same way.[2]

[1] *Cf. ex parte* Turman, 26 Tex. 713.
[2] Statutes at Large, p. 213.

In Georgia, it was contended [1] that such exempts were in the service of the Confederate States, and therefore could not be made to do duty in the militia. The court, however, held that the law freed them from service in the Confederate army only; that the terms of the statute showed no intention of granting exemption from service in the militia; but that if the reverse had been true, Congress would have exceeded its power.

The North Carolina supreme court decided differently.[2] It was of the opinion that the bonded-exempt was in the service of the Confederate government, and that Congress had the power to conscript for service other than military. "Armies, when raised, must be supported, and the power to support must be unlimited as the power to raise them." If the government had not the funds to purchase necessary subsistence for its forces, the deficiency might be supplied by compelling those excused from military service to furnish provisions according to their ability. "The supremacy of the war power of the Confederate over that of the state government cannot be disputed. The personal service which the Confederate government has a right to demand and has demanded of the petitioner is inconsistent with that which the state demands of him; and, such being the case, the latter must give way to the former." One of the three judges dissented. While concurring in the completeness of the war power of the Confederate government, he held that the bonded-exempt was under no control of that government but simply under a contract to supply certain provisions, and that therefore his obligation in no wise prevented service in the state militia.

In Alabama, it was held [3] that since the act of February 17, 1864, provided that white men between the ages of seventeen and fifty should be in the military service of the Confederate States, those not shown to be exempted specifically were constructively in that service and therefore not liable to militia duty. "The claim of the State to the military service of a man must yield to

[1] Barber *v.* Irwin, 33 Ga. 27.
[2] Wood *v.* Bradshaw, 60 N. C. 419.
[3] The State, *ex rel* Graham *in re* Pille, 39 Ala. 460.

the conflicting claim of the Confederate States; for the constitution and laws of the Confederate States passed in pursuance thereof, are the supreme law of the land."

In view of the fact, however, that those exempt under the statute of February 17, 1864, formed in the aggregate a numerous body, the Alabama court decided that the law did not intend to relieve such persons from militia duty.[1] To hold thus, counsel contended, would interfere with the exercise by the Confederate government of a means to execute a constitutional power, and such interference would be contrary to the principle enunciated in McCulloch *v.* Maryland. But Chief Justice Walker pointed out that the case cited related to instrumentalities created by the Federal government and "not to persons and property remaining within the jurisdiction of a state and protected by its laws and government." If the argument were sustained, he said, the bonded-exempt would be freed from all duties toward the state; jury trial, taxation, calling forth the militia and government itself would in certain localities be difficult and might be rendered impossible generally.

However, the tendency of the Alabama supreme court was to sustain the Confederate government. This was exemplified in a case which arose in 1863, where one discharged from the Confederate army because of having furnished a substitute, claimed to be exempt thereby from duty in the militia.[2] A draft of seven thousand of the latter for six months to be mustered into the Confederate service had been ordered by the governor in compliance with the President's call. The court held that in raising armies proper and in calling forth the militia, the Confederate government exercised distinct powers, that a citizen might be required to serve under either, and that exemption from one did not excuse from the other. "A discharge from the operation of one governmental power," the decision read, "cannot be a discharge from another, differing in the extent of the obligation imposed."

In another Alabama case, it was decided that when a boy, en-

[1] The State, *ex rel* Dawson *in re* Strawbridge and Mays, 39 Ala. 367.
[2] *Ex parte* McCants, 39 Ala. 107.

listed in the militia, reached the age of seventeen, the state must surrender his services.[1] That it had first availed itself of them was nothing. For he was not liable to duty in the Confederate army until he arrived at the minimum age fixed by the statute, and until then he was free to serve the state; but having come to that age, the claims of the Confederacy took effect.

A similar case came before the Mississippi supreme court.[2] There, one enrolled in the militia was arrested by a Confederate officer as a conscript. Thus, the decision turned in part on whether the state had the right to place its citizens in the militia before they were taken for the Confederate service, and to retain them when so claimed. It was argued that since the states had under the Confederate constitution the power "'to keep troops' in time of war and 'to engage in war' when 'actually invaded, or in such imminent danger as will not admit of delay,'" the military power of the Confederate government was merely concurrent with that of the states: and that when one of the latter had exercised such power over a person before the former had in fact placed him in service, the state had the superior claim. The court, however, refused to admit this. It held that a state could not so use its right as to deprive Congress of its power over a subject upon which it had acted in accordance with the constitution. Under the similar provisions of the constitution of the United States, said the court, probably no question was better settled than this. Since the Confederate constitution and the laws made by the Confederate States in pursuance thereof were the supreme law of the land, the state's power in cases of concurrent jurisdiction was subordinate to that of the Confederacy.

Citing Houston *v.* Moore and Ogden *v.* Sanders, the decision declared that the principles of those cases were applicable especially to the war power of the Confederate government. The experience of the United States during the Revolution and under the articles of confederation were adverted to as justifying a military power in the general government almost exclusive in time

[1] *Ex parte* Bolling *in re* Watts, 39 Ala. 609.
[2] Simmons *v.* Miller, 40 Miss. 19.

of war. "If each State has the right to withhold from Congress any portion of her citizens fit for military service and subject to it, she has equally the power to withhold all such persons whenever she may think fit to do so, . . . ; and the result might be that, when the Confederate States are engaged in a national war, that government would be wholly powerless to raise a single man within its limits to carry on the war, if the several States thought fit to retain their citizens in their services, and to enlist them all before they were called for by the Confederate States and the exigencies of the war." The doctrine of concurrent powers in courts was held to be inapplicable to questions of political powers and the relations of the Confederacy to the several commonwealths composing it. When the former exercised a power granted to it, its action thereon became paramount and exclusive, whether a state had previously acted on the subject or not.

Next to the conscription acts, the Confederate laws which aroused most opposition were those dealing with impressment.[1] The original statute, passed in March, 1863, provided that whenever the owner of property and the impressing officer could not agree on the value thereof, it was to be determined by two loyal and disinterested citizens of the vicinage, one selected by the owner and one by the officer; and in case of disagreement, these two were to choose an umpire whose decision should be final. Where, however, property was no longer in the possession of the producer, the compensation was to be determined by a schedule of prices, made and published for fixed periods not to exceed sixty days, by two commissioners, one appointed for each state by the President of the Confederate States and one by the governor.[2] Soon after, an exorbitant value was alleged to have been placed upon some hay in Virginia. The law was then amended. It was enacted that when the impressing officer did not approve the award, he

[1] For this opposition, see Schwab, "The Confederate States of America," pp. 206, 208; address of Hon. B. H. Hill in "Southern Historical Society Papers," Vol. XIV, p. 497; J. M. Daniel, "The Richmond *Examiner* during the War," pp. 75, 76; Vance to Davis in Dowd, "Life of Vance," p. 92; Pollard, "Life of Jefferson Davis," pp. 332, 334, 336.

[2] Statutes at Large, pp. 102–103.

should so indorse the appraisement and leave the price to be fixed by the state commissioners.[1] The war department then ordered that impressment agents must not approve appraisals in excess of the schedule of prices set by the commissioners for each state.[2] The constitutionality of these laws and of the executive action relating thereto was raised in several Georgia cases dealing with the taking of sugar for the use of the army in 1863.

In Cox and Hill *v.* Cummings,[3] sugar worth $1.10 per pound at the market price in Atlanta was impressed, the Confederate officer tendering seventy-five cents per pound, the price established by the commissioners for Georgia. Upon the owner declining the proffered sum, the sugar was forcibly seized. An action was brought before a lower state court by a possessory warrant, and on appeal was carried to the supreme court. The latter, after declaring that the war department's order was illegal, held that where supplies were merely accumulated for future use without any immediate necessity, private property could be taken only in one of three ways: by agreement between the government agents and the owner; by commissioners respectively selected by those parties; and by the intervention of a jury. "Congress is but the creature of the constitution," the opinion read. "It is obvious, therefore, that Congress can pass no law depriving the owner of his property, even for public use, unless adequate compensation is secured by him." While the legislative department must judge of the necessity, full compensation must be given. And the court asked whether there was any need that the value of property should be arbitrarily determined by officials. "If this be the legislation of a republican government in which the preservation of property is made sacred by the constitution, I ask wherein it differs from the mandate of an Asiatic prince." The owner was entitled to the value of the property at the time it was taken, "the amount to be assessed by a proper tribunal and paid in money." The decision was based, however, on the ground that

[1] *Ibid.*, p. 127. [2] 33 Ga. 555.

[3] *Ibid.*, 549. The Florida case of Yulee *v.* Canova (11 Flor. 9) did not involve any constitutional point.

the commissioners had not fixed a price for the grade of sugar involved.

In several similar cases [1] argued together a little later, the same court squarely pronounced the fifth and sixth sections of the impressment act unconstitutional and therefore void. The owners of the sugar in question had paid one dollar per pound for it, it was worth on the day of seizure $1.20 per pound, and the price tendered was seventy-five cents. The opinion referring to arguments drawn from the alleged existence of a law older than and superior to the constitution and from necessity, pointed out that the latter word was not found in the clause of the constitution regulating the taking of private property. That power of the Confederate government was a limited one. The validity of the section of the statute authorizing impressment to accumulate supplies for future use where no urgency existed was upheld as requisite for the satisfaction of the country's wants when the normal method of provisioning the army was frequently not feasible. But the act of Congress was referred to as "professedly conforming to the limitation of the constitution, but flagrantly unadapted to the ascertainment of value, and practically tending to a very different result." The impossibility of obtaining exact justice in each particular instance of impressment, and the unfortunate effects of delaying by litigation these operations of the Confederate government were admitted. "Much has been said . . . of the imperiled condition of the country, and of the fatal consequences likely to result from judicial interference with the war measures of the government; but let it be remembered that by a provision of the instrument itself, judges as well as legislators are sworn 'to support the constitution'; and this they are to do in war, as well as in peace." The object of impressment was not to reduce prices in behalf of the government; otherwise there would be imposed on some a contribution for carrying on the war which others escaped.

A somewhat different case involving the constitutionality of impressment arose in Alabama.[2] Certain rolling-stock and other

[1] Cunningham *v.* Campbell *et al.*, 33 Ga. 625.

[2] Alabama and Florida Railroad Co. *v.* Kenney, 39 Ala. 307.

property of the Alabama and Florida railroad having been seized by Confederate impressment agents, the company sought by injunction to restrain them on the ground that the property being mortgaged, seizure would impair the obligation of a contract and also would destroy a franchise granted by a state. The Alabama supreme court passed by the question as to whether the prohibition to impair the obligation of a contract applied to the Confederate government. But it affirmed that government's right to take for public use all private property. The opinion declared that all property not inherited was held under a contract. Hence the great mass of it would be beyond the government's reach if that so derived could not be taken for public use. The exercise of eminent domain did not impair the obligation of the contract under which the property was held; it transferred to the government the rights therein, given by the contract, and did not operate upon the latter. The court sustained the government also on the ground of the decision in West Bridge Co. *v.* Dix, that there are in every contract implied conditions, one of which is the right of eminent domain.

The suspension of the writ of *habeas corpus* by the Confederate Congress or under its authority and the arrests made in accordance therewith produced hostile criticism in the South,[1] as the corresponding measures did in the North. Though the act of February 15, 1864, which was far milder than previous laws on the same subject,[2] was pronounced unconstitutional by the legislatures of Georgia, Mississippi, and North Carolina,[3] no decision involving this interesting point was rendered by the highest tribunal of any state during the war. But the constitutional scope of the suspension was dealt with in decisions by the three members of the North Carolina supreme court, sitting individually in vacation. Each case involved the applicability of the suspen-

[1] Rhodes, "History of the United States," Vol. V, pp. 454–455; "Southern Historical Society Papers," Vol. XIV, p. 497; Toombs, Stephens, Cobb Correspondence in "American Historical Association" Annual Report, Vol. II, p. 639; Stephens, "War Between the States," Vol. II, pp. 778–780.

[2] Rhodes, Vol. V, pp. 453–456.

[3] *Ibid.*, p. 456.

sion to one held for military service who claimed that he was not liable to conscription.

Chief Justice Pearson, not yet having been reversed in his decision that the conscription of principals of substitutes [1] was unconstitutional, held that the petitioner was entitled to the writ as a civil remedy to establish his right under a contract, that the clause authorizing the suspension of the privilege applied only to writs issued for the production of persons accused of crime, and that Congress had no power to extend the suspension to any other case.[2] But the two colleagues of the chief justice, Judges Battle and Manly, came to an opposite conclusion.[3] The former brushed aside the contention that the act was not intended to apply to those who endeavored to establish their legal claim to exemption from conscription. He decided that one held as a conscript, petitioning for a writ of *habeas corpus*, came within the law suspending the privilege of the writ in cases of "attempts to avoid military service." "The salvation of the country," he said, "is the object sought, and the framers of the constitution, who authorized the act of suspension, and the legislators who passed it, deemed that object so transcendently great, that, for the time, all individual rights which conflicted with it ought to give way to it."

On the closely related question of the constitutionality of the exercise of martial law over civilians, the chief justice of the supreme court of Texas seems to have expressed an opinion that martial law in such cases was constitutional.[4] One of the other two members of the court, Judge Bell, roundly asserted the contrary. He held that "no power exists anywhere in the Confederate government to subject citizens, not belonging to the army or navy, and not actually serving in the militia, to any military code, or to the will of any military officer, provost marshal or other, or to the jurisdiction of any other tribunal than the ordinary courts of justice established by law." And he rejected the contention that

[1] *Supra.* [2] In the matter of Cain, 60 N. C. 525.

[3] In the matter of Long, 60 N. C. 534; in the matter of Rafter, 60 N. C. 537.

[4] *Ex parte* Coupland, 26 Tex. 406, Judge Bell's dissenting opinion; but the chief justice declared that the question did not properly arise in the case — *idem*, 430.

Congress had the right to declare martial law as an incident to the power to make war.

In the short period of time during which the Confederate States existed, we see its constitutional law developing from that of the United States as the common law of the latter continued in 1776 from that of England. Since the permanent constitution of the Confederacy was so closely modeled after that of the United States, and since many of the clauses of the latter during its seventy years of life before the outbreak of the war had received authoritative judicial interpretation, there naturally were not many constitutional points raised in the southern courts in such troublous times. In about half of the states which seceded, no such case is found in the reports of their supreme tribunals. As for the relatively few original features in the Confederate constitution, they were not dealt with judicially partly, perhaps, because of their nature, and partly because some of them were never carried into execution.[1]

The cases that have been passed in review arose wholly out of the military measures of the government.[2] Significantly, most of these decisions were rendered during the last eighteen months of the struggle. They are signs of the growing opposition to the Davis administration. Both the North and the South were hampered by a written organic law, some of whose provisions were thought by many to be in conflict with measures alleged to be

[1] To fully justify the title of this paper, the decisions of the Confederate district courts ought to be examined. However, I have been unable to locate the opinions of these courts either in manuscript or in print. Almost all that we apparently have relating to their work are brief, scattered newspaper accounts. The recently acquired records in the Congressional Library are mere dockets. On the basis of newspapers, Schwab ("Confederate States of America," pp. 116, 119, 219) narrates that Judge Magrath in the Confederate district court for South Carolina upheld the constitutionality of the sequestration and conscription acts; also that he decided that Congress could not tax money invested in state bonds.

[2] The North Carolina supreme court decided that the act passed by the legislature, May 11, 1861, called the "stay law" was unconstitutional in so far as it prevented a plaintiff from obtaining a judgment or the execution thereof. While this decision rested mainly upon the provisions of the state constitution, it was also based in part upon the clause of the Confederate constitution prohibiting a state to impair the obligation of a contract (53 N. C. 366). The Confederate notes were never made legal tender; hence, though the constitutionality of attaching such a

necessary. An extended parallel between the two sections in this respect might be drawn.[1]

It is rather astonishing to find in the cases examined above the opinions of the United States Supreme Court, including some by Marshall himself, so frequently cited with approval. The "necessary and proper" clause and the supremacy of the Confederate constitution and of the laws made in pursuance thereof were emphasized in a manner not to be expected. That the Confederate government was paramount within the sphere of its own powers was laid down more than once by these state courts. In several instances, the judges disclaimed any intention of being influenced by the conditions in the Confederacy; but if, in the clash of arms, the laws were not silent, the courts could hardly have remained uninfluenced by the gigantic contest. Then, too, training and the natural conservatism of the bench would help to explain the result. While there were a few exceptions, most notable of whom was Chief Justice Pearson of North Carolina, the Richmond authorities were in general spared from attempts to enforce statutes despite adverse decisions of state courts.

Would such a trial of strength, which might have proved fatal to the central government, have been made? The respect of the Southern mind for states' rights inclines one to a negative answer. Moreover, we have the record of some incidents which throw light on this question. When Governor Brown of Georgia, alleging the unconstitutionality of the conscription law, refused to permit its enforcement in that state until the legislature thereof should act,[2] it was from the supreme court of Georgia and not from a Confederate district court that President Davis took steps

quality to them was discussed in and out of Congress, no decision was given by the courts on this point (Schwab, "The Confederate States of America," *passim*). The constitutionality of the funding act of February 17, 1864, and of the emission of bills of credit by the states, both of which Schwab asserts were violations of the Confederate constitution (*idem*, pp. 98, 100), was not determined by the supreme court of any state during the war. The constitutionality of the tax of April 24, 1863, was discussed (*idem*, p. 294), but no case involving this point is reported.

[1] Review by J. L. M. Curry in the Southern Historical Association Publications, Vol. V, p. 510; J. M. Daniel, "The Richmond *Examiner* during the War," p. 74.

[2] War of the Rebellion, Off. Rec., Ser. IV, Vol. II, p. 130.

to obtain a decision on the disputed point.[1] And in the interval, enrolment of conscripts was suspended in Georgia.[2] Both the President and secretary of war Randolph showed a similar attitude in the case of the Virginia military academy cadets, where the unconstitutionality of the conscription act was also raised.[3] What, apparently, was but half a victory for the state courts occurred in North Carolina. There, the Confederate authorities refused to suspend the operation of a later conscription law because of Judge Pearson's decision (*supra*); but they did release, pending appeal, those actually discharged on *habeas corpus* proceedings.[4] But the fact that Judge Pearson's two colleagues had delivered decisions contrary to his, and the action of the Virginia court of appeals showed the President that he could pursue with safety the course followed in North Carolina.[5] On the whole, however, the tendency of the highest courts of the Southern states during the war was to sustain the acts of the Confederate government and not to emphasize states' rights. This may explain why the movement to establish a Confederate supreme court did not become stronger.

[1] *Ibid.*, p. 141.
[2] *Ibid.*, pp. 170, 216.
[3] *Ibid.*, pp. 123–124.
[4] *Ibid.*, Vol. III, p. 198.
[5] *Ibid.*, Ser. IV, Vol. III, p. 201.

VI

SOUTHERN LEGISLATION IN RESPECT TO FREEDMEN

1865–1866

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VI

SOUTHERN LEGISLATION IN RESPECT TO FREEDMEN, 1865–1866

Among the multitude of perplexing problems arising out of the Civil War, which confronted the Southern people in 1865 and 1866, two seemed, and in fact were, of preëminent importance to the section as a whole. Both concerned the negro, and therein lay their chief difficulty.

Probably the more important was the question of labor, touching, as it did, if not controlling, the economic welfare of the community as well as of every individual; but scarcely less important in the minds of the Southern leaders at the time was the question of the legal status of the freedmen. Therefore, acting under the necessities of the moment, all the Southern conventions and legislatures promptly turned their attention to these problems and, in their attempt to find a solution for each, unconsciously furnished one of the most important and effective instrumentalities of attack upon the South and upon President Johnson's plan of restoration.

That the need of speedy and definite action in regard to both questions was imperative, cannot to-day be doubted. The South was completely prostrated, and the one hope for the future lay in the immediate rehabilitation of her principal industry, agriculture. Here negro labor was indispensable, and in 1865 there was strong reason for the belief that the negroes generally would either refuse to work, or else work so irregularly as to inflict great injury upon all agricultural interests. Nor was this the only consideration, for it was easy to see that the burden of supporting the idle population would be greater than could be borne, whether that support took the form of public relief of paupers, or whether it was obtained from private charity or by theft.

The basis for this belief was, unquestionably, in part, feeling,

due to the white man's intimate acquaintance with the nature, habits, and characteristics of the negro, but this was not all. The conduct of a very large portion of the negro population furnished at once proof of the correctness of this feeling. Wherever federal troops were stationed, the negroes flocked, and, relying upon the army for food, clothing, and shelter, abandoned all thought of labor, which they deemed too confining and entirely incompatible with their new-found freedom. As one colored writer phrased it: "When directive oversight was withdrawn, and the negro left to his own volition, his productiveness and reliability as a worker, for obvious causes, deteriorated. He had no ambition to excel; to him labor was bondage; idleness, freedom." [1]

The freedmen's bureau intensified this feeling and tendency. By its very act of relieving distress, it encouraged and caused a vast amount of it. Furthermore, its agents often stimulated the restlessness of the negroes and contributed toward the breach with the native whites. Within a few months there was confusion everywhere. The negroes, excited and credulous, seeking to put freedom to the test in the most obvious way, restlessly moved upon impulse from place to place, supported, now by government rations, now by theft or forage. In either case, a helpless and impoverished community bore the burden. Soon the negroes were given to understand that the government was to take care of them, and, Christmas having always in the past been a time of gifts, they settled upon it as the probable occasion for the anticipated distribution of land and stock. In every state the general situation was the same, and contracts for labor became increasingly difficult to make and, once made, more difficult to enforce. It was not an unnatural condition of affairs, considering everything, but its being a logical situation did not at all lessen the gravity of the danger to the various communities concerned. There were not enough available laborers to gather the pitifully small crops of 1865. Something had to be done and done quickly

[1] Thomas, "The American Negro," p. 46.

to prevent a labor famine, and the whole system of labor legislation which followed was designed to satisfy the immediate and practical exigencies of the case. In it there was no sentiment and no claim of any. To expect more than this was, indeed, under the circumstances, to be unreasonable.[1] As one Southern witness before the Reconstruction committee phrased it: "You, gentlemen of the North, who have not a mass of 300,000 or 400,000 suddenly emancipated negroes in your midst, can hardly appreciate the caution which we feel to be necessary in dealing with any of these problems. However much we may be determined to do them justice, there are questions of safety and expediency which must be considered by prudent and discreet men." [2]

The question of the legal status of the negro, while not so imperative as the labor question, properly seemed to be one of which the immediate settlement would benefit both races. There was a widespread feeling that doubt in the minds of either race upon the subject would make delay dangerous; that the administration of justice required an early definition of legal rights; and that prompt action would forestall any attack from the North. The last-mentioned reason, however, played a much smaller part than might have been expected or than, for political reasons, it should have done; for the Southern people, in respect to the whole question of the negro, were strangely lacking in self-consciousness. Possibly, conservative as they were, it never occurred to the minds of most of them that any one could doubt that the settlement of these problems could be otherwise regarded than as a matter for state action. A superficial knowledge of Northern sentiment would have rudely dispelled such a belief, but very few in the South knew anything about Northern sentiment, and, undoubtedly, many would have cared little had they known. It must not, however, be supposed that a spirit of defiance lay behind the legislation here discussed. There is no evidence that such a spirit existed among the political leaders at all, or among any large pro-

[1] Woolley, "Reconstruction in Georgia," p. 21.

[2] Testimony of John B. Baldwin. H. R. Reports, No. 30, 39th Cong., 1st Ses., pt. II, p. 102.

portion of the people. There is, moreover, abundant evidence to prove beyond the shadow of a doubt, not only the sincerity and good faith of the people, but even their spirit of submission to the conqueror. Certainly there is no ground for the statement of Blaine, made many years later in a spirited defense of the Republican party, when he said among other things: "It would, indeed, according to their own boasts, add a peculiar gratification to their anticipated triumph, if they could feel assured that it would bring chagrin or a sense of humiliation to the Republican masses of the loyal States." [1]

In spite of the conviction of the South that the questions referred to were local, a number of Southern leaders had seen enough of the North since the war to recognize that the war had brought about certain changed conceptions of the nature of the powers of government in respect to the South, and that there was need to consider the Northern attitude in regard to the negro question. Alexander H. Stephens was one of these. In his speech to the legislature of Georgia, he said, "Ample and full protection should be secured to them, so that they may stand equal before the law, in the possession and enjoyment of all rights of person, liberty, and property." [2] He also favored the creation of a class, a guild, or a corporation for the negroes which should have representation in the legislature, they being allowed the right of suffrage in a restricted form.[3] He had not at all changed his opinion of the negro. He said: "Equality does not exist between blacks and whites. The one race is by nature inferior in many respects, physically and mentally, to the other. This should be received as a fixed inevitable fact in all dealings with the subject. It is useless to war against the decrees of nature in attempting to make things equal which the Creator has made unequal; the wise, humane, and philosophic statesman will deal with facts as he finds them." [4] Stephens was by no means alone in his position. John H. Reagan,

[1] "Twenty Years of Congress," Vol. II, p. 91.
[2] Cleveland, "Alexander H. Stephens," pp. 812–815.
[3] Avary ed., "Recollections of Alexander H. Stephens," pp. 269–270, 517.
[4] *Ibid.* p. 207.

in his notable letter to the people of Texas, urged the admission of negro testimony in the courts on the same terms as that of white persons, and he also favored a qualified negro suffrage.[1] Governor Marvin, of Florida, in discussing the matter, said: "As citizens before the law, the freedmen must in all respects be our equals. Furthermore, persons of color must be admitted as witnesses in all courts of civil procedure. . . . You keep the negro out of the courts and what chance has he? And the North is very powerful even after the war and has strength enough to enforce its decrees." [2]

More important, however, than any of the reasons mentioned was the general belief that justice itself required prompt action and a liberal course towards the negro. Whatever may have been the faults of the South as regards the negro, and few will maintain that they were lacking, they were not to be found in the general and prevailing view of what rights the negro should enjoy under the law. In respect to negro testimony alone was there a sharp division of opinion, and even there, the opposition to it was ineffective, coming, in the main, as it did from the lower and ignorant classes, and disregarded alike by the leaders and legislators. In this connection, an interesting fact presents itself. In almost every state the most intense opposition to negro testimony came from the later Radicals. This was markedly the case in Tennessee, where the Unionists of East Tennessee were almost unanimous in opposition to it,[3] and in North Carolina, where William W. Holden and his newspaper, the *Standard*, ably seconded by almost every native leader of the later Republicans, opposed it with every possible argument they could employ.

Having surveyed the problem and sentiment of the South, we may now turn our attention to the view of the victorious North. No sharper contrast can be found. The sentiment of the North as a whole upon the question of the freedmen had little of the practical and much of the sentimental. This was natural, for

[1] Ramsdell, "Reconstruction in Texas," pp. 87–88.
[2] Davis, "Civil War and Reconstruction in Florida," p. 358.
[3] H. R. Reports, 39th Cong., 1st Ses., no. 30, pt. I, pp. 112, 117, 121, 127.

the North knew little of the Southern negro and yet had heard enough of him to believe that it had an intimate acquaintance with the race. It was scarcely to be expected then that Northern people would be able to realize the gravity and immensity of the problem in the South, if even to recognize the existence of a problem.

In the minds of the sentimentalists, the humanitarians, and the politicians, the question was in no sense a local one. Through the results of war and military emancipation, the negro, they felt, had become in a special sense the ward of the nation, and, consequently, he should be protected by the nation, at any cost, from the injustice, oppression, and wrong certain to be inflicted by his late owners. The whole attitude of the North was characterized by suspicion and distrust of the Southern people, who were given no credit for honesty, good faith, or humanity. Herein lay the key to the whole feeling of the North. The action of the South in regard to the negro was judged and condemned in advance, and it was useless thereafter to attempt to show the real nature of the legislation concerning the freedmen. The same thing would probably have been true had the action been radically different, provided that the negro was not placed on a footing of entire equality, for equality was a word to conjure with so long as it was to be applied, practically, to the South alone.

Sentimental as public feeling was, it must not, however, be supposed that practical considerations were entirely lacking. There was little of the sentimental in Thaddeus Stevens, for example, except an exceedingly clear conception of the value of sentimentality as a political asset. With him and with many others the future of the Republican party was above all considerations that of chief importance. Very skilfully, therefore, sentiment and conditions at the South were interpreted in their own terms, distorted, and grossly misrepresented with the single purpose of securing party advantage. Plans had been matured and the time for action had arrived when the Mississippi legislature undertook to solve the problems confronting that state as a result of emancipation. It is usual to assign to the so-called "Black

Codes" the responsibility for the inauguration of the Radical policy of Reconstruction. As a defense for that policy it has been quite effective, but it has small basis in fact. Mississippi and South Carolina, it is true, had both taken action when Congress met, and the question was before other Southern states, but what the South had done was not the determining factor in the Stevens resolution, the freedmen's bureau bill, or even in the civil rights bill. The debates contained almost no allusions to what the South was doing, but laid emphasis on what might happen in the future. Trumbull said the civil rights bill was based upon the fact of the slave codes and the codes for free negroes in operation prior to emancipation.[1] But before the country the whole policy was defended by constant reference to the distorted and untrue accounts of Southern legislation which had been spread abroad in a campaign of misrepresentation. The truth was not sought, and when found by accident was ignored. Blaine, the best known of the critics of the legislation, fifteen years later, taking no pains to find the truth, describes legislation never enacted, and makes the following sweeping statements: "The truth was, that his [the negro's] liberty was merely of form and not of fact, and the slavery which was abolished by the organic law of a nation was now to be revived by the enactments of a state." [2] "The South had no excuse for its course, and the leaders of its public opinion at that time will always and justly be held to a strict accountability." [3]

It must not, however, be supposed that the legislation of the Southern states was by any means above criticism. Much of it was unwise, considering that every action of a Southern state was watched by unfriendly agents of the freedmen's bureau, by newspaper correspondents on the lookout for sensational news, by a host of investigating travelers, by calculating and hostile politicians, and by a suspicious public. The motives of its framers in general were good, even above reproach, but wiser and more

[1] "Globe," 39th Cong., 1st Ses., p. 474.
[2] *Op. cit.*, Vol. II, p. 91.
[3] *Ibid.* p. 106.

experienced leaders, unfortunately then in the background, might possibly have displayed greater caution. Nor is this all. Some of the legislation — a small part, however — was indefensible.

The first state to take action, as has been said, was Mississippi. This circumstance, combined with the additional fact that its legislation was more stringent than that of the other states, made it the chief object of attack in the North during the period which followed. In addition, most writers on the subject since that time have contented themselves with an analysis of Mississippi's code, and declared that it was typical of all the rest.[1]

The convention of 1865 appointed a committee to draft and report to the legislature a code for the freedmen.[2] The committee's report displayed an unpleasant spirit. They declared that they had as a guide for their work only "their own observation and knowledge of the nature, disposition, habits, capacity, condition, weakness, and necessities of the two races as they now exist at the South." Refusing to follow the recommendations of "those who are grossly ignorant in practical life and minute observation of what they speak and write and would have us legislate," they presented the report of which they said: "while some of the proposed legislation may seem rigid and stringent to the sickly modern humanitarians, they can never disturb, retard, or embarrass the good and true, useful and faithful of either race." If the criminal and penal laws should seem too stringent for any of either race, "they can flee and take sweet refuge in the more inviting bosom of the state or community who may cherish a more lively and congenial fellow-feeling and agrarian sympathy for that class and who are better able to spread them feasts and communing sacraments." Denying all feeling of bitterness, the committee stated that it desired no guidance by "the spirit of dictation and

[1] The Mississippi legislation has been discussed in detail in the following works: Garner, "Reconstruction in Mississippi," pp. 109–112; Stone, "Legal Status of Freedmen in Mississippi," pp. 143–226, in "The Publications of the Mississippi Historical Society," Vol. IV. It is also summarized in Burgess, "Reconstruction and the Constitution," pp. 47–54.

[2] The committee consisted of R. S. Hudson, A. H. Handy, E. J. Goode, and W. Hemingway.

distempered intermeddling of those who have no place among us." [1]

It is clear from these expressions of feeling that the code suggested would be severe, but, nevertheless, it can hardly be regarded as a reënactment of the slave code. Its essential parts were in brief as follows:

An apprentice law was passed which provided for the apprenticing of all colored orphans or those without means of support who were under eighteen years of age, their former masters being given the preference when in the opinion of the court they were suitable persons. The master was empowered to inflict moderate chastisement for misbehavior and was entitled to judicial remedy for the recovery of a runaway. A runaway apprentice, however, had the right of appeal to the county court, which, if it judged the cause of the desertion good, could discharge him and award damages of one hundred dollars against his master. The master was compelled to give bond to furnish sufficient food and clothing with proper medical attention, to treat the apprentice humanely, and, if the latter was under fifteen years of age, to teach him to read and write.[2] The vagrancy act, after the usual definitions of vagrancy and provision for its punishment, provided further that all persons of color, above the age of eighteen years, found on the second Monday in January, 1866, or thereafter, with no lawful employment or business, or found unlawfully assembling themselves together either in the day or night, together with all white persons so assembling with them on terms of equality, or living in adultery or fornication with negro women, should be deemed vagrants, and upon conviction should be fined, in the case of a person of color, not more than fifty dollars, and in the case of a white person, not more than two hundred dollars, and in addition be imprisoned not more than ten days in the case of a negro and six months in the case of a white person. Jurisdiction without a jury was conferred upon all justices of the peace, mayors, and aldermen. Should a negro fail to pay his fine within five days, he was

[1] Rowland, "Encyclopedia of Mississippi History," Vol. I, pp. 245–247.
[2] Laws of Mississippi, 1865, Chap. v, p. 86.

to be hired out by the sheriff for an amount equal to the fine. A poll tax of not more than one dollar *per annum* was ordered levied upon all negroes between eighteen and sixty years of age, the proceeds to be used exclusively for the colored poor.[1] An act to confer civil rights upon the freedmen gave them the right to sue and be sued, to implead and be impleaded in all the courts of the state, to acquire, hold, and dispose of property in the same manner and to the same extent as white persons, with the exception that they could not rent or lease lands or tenements anywhere but in incorporated towns.[2] In the course of time, thanks, probably, to the mass of misinformation collected by Blaine, this has been interpreted into a prohibition of a negro's *owning* land. No such prohibition was to be found in the law of the state, but it is nevertheless referred to by almost every writer upon the subject and is to be found even in a defense of the Mississippi code written by an able and tireless investigator.[3] Its repetition furnishes an example of the extreme difficulty of ever checking a misstatement.

The same law granted to the negroes the right to marry on the same terms as white persons, but it prohibited intermarriage, imposing a penalty of life imprisonment. All negroes who had previously cohabited together as husband and wife were declared legally married with their issue legitimate. The right to testify in all cases, civil and criminal, in which the rights of persons of color were affected was extended to all negroes. All persons of color were required to have a lawful home or employment by the second Monday in January, 1866, and to have written evidence of it, either in the form of a license from the mayor of a town or from a member of a rural board of police for job work, or a contract for labor. All contracts for labor for a longer period than one month were required to be in writing in duplicate, witnessed and read to the negro by an officer or by two disinterested white persons. Quitting service before the expiration of a contract without good cause forfeited wages for the time served. Any

[1] Laws of Mississippi, 1865, Chap. vi, p. 90.
[2] *Ibid.*, Chap. iv, sec. 1, p. 82.
[3] Stone, *op. cit.*, p. 166.

officer arresting a fugitive was entitled to costs, which had to be paid by the employer and deducted from the wages of the employee. Heavy penalties were imposed for the enticing away of employees or for selling or giving runaways food, clothing, or other articles. Negroes were given the right to charge white persons by affidavit with criminal offenses and to have the same process and action thereon as white persons. The penal laws of the state, applicable to slaves and free negroes, were applied to freedmen and free negroes except as the manner of trial and punishment had been changed by law.[1] Freedmen were forbidden to keep or carry arms of any sort, and heavy punishment was provided for white persons who furnished them. It was also enacted "that any freedmen, free negro or mulatto, committing riots, routs, affrays, trespasses, malicious mischief, cruel treatment to animals, seditious speeches, insulting gestures, language or acts, or assaults on any person, disturbance of the peace, exercising the function of a minister of the gospel, without a license from some regularly organized church, vending spirituous liquors, or committing any other misdemeanor, the punishment of which is not specifically provided for by law," should upon conviction be fined not less than ten nor more than one hundred dollars, and might at the discretion of the court be imprisoned not more than thirty days.[2] In a few other cases there were differences of punishment, that for persons of color being always lighter for the same offense.[3]

Such were the essential features of the legislation of Mississippi concerning the freedmen. Even in the state it did not receive undivided approval, one newspaper going so far as to say that it was the work of "a shallow-headed majority, more anxious to make capital at home than to propitiate the powers at Washington." "They are," said the editor, "as complete a set of political Goths as were ever turned loose to work destruction upon a State. The fortunes of the whole South have been injured by their folly."

[1] Laws of Mississippi, 1865, Chap. iv, secs. 2–11, p. 82. *Ibid.*, also Chap. xxiii, p. 165.

[2] *Ibid.*, Chap. xxiii, p. 167.

[3] *Ibid.*, Chap. liii.

Outside the state, comment was even more caustic. The *Chicago Tribune* said, "We tell the white men of Mississippi that the men of the North will convert the State of Mississippi into a frog pond before they will allow any such laws to disgrace one foot of soil in which the bones of our soldiers sleep and over which the flag of freedom waves." [1]

Probably next to Mississippi, South Carolina had the most rigid system of negro legislation.[2] The convention of 1865 provided for the appointment of two commissioners to prepare a code of laws on the subject of the freedmen.[3] Their report as it finally became law included: 1, an act preliminary to legislation induced by emancipation; 2, an act to amend the criminal law; 3, an act to establish district courts; and, 4, an act to regulate the domestic relations of persons of color and to amend the law in relation to paupers and vagrants.

The first act defined persons of color and gave them the right to acquire, own, and dispose of property, to make contracts, to enjoy the fruit of their labor, to sue and be sued, and to receive protection under the law for their persons and property, all rights and remedies, duties and liabilities applicable to white persons being extended to persons of color.[4] The criminal law as amended imposed the death penalty upon persons of color for wilful homicide, except in self-defense, for assault upon a white woman with intent to commit rape, or for impersonation of her husband. An assault by a servant upon his master or upon any member of the latter's family was made a misdemeanor. To check the stealing of farm produce, no person of color, in employment, could sell meat or farm produce without a written permit. Negroes were excluded from the militia, and were forbidden to keep weapons other than a hunting rifle or a shotgun without a permit. They were forbidden also to sell liquor. The migration of persons of

[1] Quoted in Garner, *op. cit.*, pp. 115 n., 116.

[2] The legislation of South Carolina is discussed in Hollis, "Reconstruction in South Carolina," pp. 47–51, and in Reynolds, "Reconstruction in South Carolina," pp. 27–33.

[3] The commission was composed of Judge Wardlaw and Armistead Burt.

[4] Act of Oct. 19, 1865.

color into the state was prohibited unless bond was given within twenty days for good conduct and for support. Whenever any fine and costs were not paid, the prisoner, if white, was subject to imprisonment one day for every dollar of the fine; if black, he was subject to enforced labor "without unnecessary pain or restraint" for the same period. District courts were established and given exclusive jurisdiction, subject to appeal, of all civil and criminal cases where one party was a person of color or where the person or property of persons of color was affected, except that an indictment for any capital offense against any white person had to be in a superior court. Persons of color were made competent witnesses in all cases affecting persons of color. The marriage law differed little from that of Mississippi, except that a negro living with two or more women, in the relation of husband, had to choose one of them as his wife and be married within six months. All colored children were made legitimate, and intermarriage between the races was declared illegal and void. An apprentice law, substantially the same as that of Mississippi, was passed with the further provision that the consent of female orphans of over ten and of males of over twelve years of age was necessary. In addition, the master was bonded to teach the apprentice a trade and give instruction in morality and good habits. The relation could be dissolved by any magistrate upon evidence of neglect or ill-treatment with the right of damages and compensation to the end of the term of service. All persons of color pursuing any other occupation than that of agriculture or service had to be licensed by the district judge. Helpless former slaves could not be evicted prior to January 1, 1867. There was also a most elaborate schedule of regulations for laborers, as to time of labor, duties, and obligations. Visitors without permission were forbidden as was absence from home without leave.[1]

In January, 1866, General Sickles issued an order to disregard the entire code and later replaced it by a series of regulations for freedmen which entirely ignored the rights of the whites.[2] In

[1] Act of Dec. 21, 1865.

[2] McPherson, "Political Manual for 1866," p. 36.

September, 1866, the legislature met in special session. Governor Orr in his message said: "Experience will demonstrate the wisdom of your enactment authorizing negroes to testify in all cases. It takes away the immunity which bad men have long enjoyed of tempting these ignorant people to perpetrate crime for the benefit of the tempters. The result of the experiment at the late fall terms of the courts has been entirely satisfactory, and most of the freedmen who have been called to the witness stand have manifested a highly creditable desire to tell the truth." The legislature then amended the code so as to make the district courts inferior tribunals without reference to color. All discriminations in the criminal laws were repealed, and the negroes were placed upon exactly the same footing before the law as the white people.

Florida's legislation was in no sense extreme.[1] The convention of 1866 provided for a committee to draft a code,[2] and its report in substance was adopted by the legislature. It included a stringent vagrancy law which made no distinction whatever on account of color. The convention had already adopted a much more severe law which was abrogated by the latter act. County criminal courts were established with jurisdiction over all cases not involving capital punishment.[3] Marriages of negroes were legalized and negro children declared legitimate. Intermarriage of the races was forbidden under very severe penalties. Provision was made for the witnessing and filing of contracts with persons of color in all cases for more than thirty days, and penalties were prescribed for the failure of either party to keep his agreement. Damages awarded to an employee were made a first lien upon crops.[4] Provision was made for colored schools to be supported by a tax of one dollar upon all male persons of color between twenty-one and forty-five years of age, by a certificate fee of five

[1] The legislation of Florida is discussed in some detail in Wallace, "Carpet Bag Rule in Florida," pp. 27–36, and in Davis, "Civil War and Reconstruction in Florida," pp. 358, 409, 426.

[2] This committee consisted of C. H. Dupont, A. J. Peeler, and M. D. Papy.

[3] Act of Jan. 11, 1866.

[4] Act of Jan. 12, 1866.

dollars for all teachers, and by tuition fees.[1] A yearly poll tax of three dollars was imposed upon all male citizens between twenty-one and fifty-five years of age, and those failing to pay it could be hired out for the amount.[2] Arms could only be owned under license.[3] Each race was forbidden to intrude upon meetings of the other. Practically all legal discriminations between whites and blacks were abolished. The convention had already guaranteed the enjoyment of rights of person and property with all legal remedies, and by ordinance had forbidden all discrimination in criminal cases, founded upon injury to colored persons, and in all civil causes affecting the rights and remedies of colored persons. There was a tendency apparent in the work of the legislature to make corporal punishment more frequent than before, and to extend it as an alternative, within the discretion of the jury, to offenses hitherto punished by fine. The reason for this was explained at the time in the report of the committee as follows: "To degrade a white man by punishment is to make a bad member of society and a dangerous political agent. To fine and imprison a colored man, in his present pecuniary condition, is to punish the state instead of the individual."[4] However true this may have been, its effect upon the North can readily be imagined.

The legislation of no state has been more misrepresented than that of Louisiana.[5] Blaine, for example, devotes much space and rhetoric to analysis and denunciation of two bills which he said were enacted into law, but neither of which in fact had ever been passed. The only statute which did pass in Louisiana was a vagrancy act based upon a law of 1855 and upon the vagrancy acts then in force in a number of the Northern states.[6] This made no discrimination whatever between the races. No law was

[1] Act of Jan. 16, 1866.

[2] *Ibid.*

[3] Act of Jan. 15, 1866.

[4] "Annual Cyclopædia," 1866, p. 324; Wallace, *op. cit.*, p. 32.

[5] The legislation of Louisiana is discussed in some detail in Ficklen, "Reconstruction in Louisiana," pp. 137–145.

[6] Ficklen, *op. cit.*, p. 140; H. R. Report No. 30, 39th Cong., 1st Ses., pt. iv, p. 56.

ever passed defining the civil status of the freedmen, but it was uniformly held that the new constitution placed them upon the same footing in the courts as other free persons.

Alabama took action on the question in 1865.[1] The legislature declared all negroes to have full rights before the courts without any discrimination except that negro testimony was only admissible in cases touching some right of a person of color.[2] An apprentice act was passed similar to others already described. There was the usual contract law providing that all contracts or agreements for labor for more than thirty days should be in writing and properly witnessed, with penalties for non-compliance on the part of either party.[3] Negroes were prohibited from owning firearms and from carrying deadly weapons. More extreme action might have been taken, had not General Swayne warned Governor Patton of the probable bad effect in the North of several laws which the governor at once vetoed. General Swayne was always present when negro legislation was under discussion and approved of all that was done, including the apprentice law.[4] The penal code was altered so as to abolish whipping and branding and to introduce a new punishment, "hard labor for the county," which was made an alternative for fine and imprisonment. The dividing line between grand and petit larceny was raised from twenty dollars to one hundred dollars, the former being made a felony and the latter a misdemeanor. The intermarriage of the races was prohibited.

Governor Jenkins of Georgia in his inaugural address demanded that rights of person and property be extended to negroes and that the courts should be opened to them and their testimony allowed wherever the rights of persons of color were affected.[5] The convention had already ordered the legislature to make regu-

[1] The legislation of Alabama is discussed in detail in Fleming, "Civil War and Reconstruction in Alabama," p. 378 *et seq.*

[2] Act of Dec. 9, 1865.

[3] Act of Feb. 16, 1866.

[4] Fleming, *op. cit.*, p. 378.

[5] "Annual Cyclopædia," 1865, p. 399. The legislation of Georgia is analyzed in Woolley, "Reconstruction in Georgia," pp. 16–22.

lations respecting the altered condition of the negroes. A commission was appointed to recommend the needed changes in the law, and their report was presented to the legislature. The governor in his message of January 15, 1866, indorsed it as just and liberal to freedmen and white citizens alike. By later legislation, negroes were given the right to sue and be sued, to make and enforce contracts, to be parties and give evidence, to inherit, to purchase, lease, sell, hold, and convey real and personal property, to have full benefit of all laws for the security of persons and estate, and to be free from subjection to any other or different pain or penalty for the commission of any act or offense than those prescribed for white persons.[1] The penal code was altered so as to impose the death penalty for burglary in the night, horse-stealing, rape, and arson.[2] Several hundred crimes, including all species of larceny, save those just mentioned, were made misdemeanors with penalties that included whipping, imprisonment in the penitentiary or jail, and fine.[3] This was done deliberately in consideration of the ignorance of the freedmen which would make the severer penalties under the former laws unjust if applied to them. Vagrancy, apprentice, and enticement laws, similar to those of the other states already discussed, were passed.[4] Intermarriage of the races was prohibited and slave marriages were validated and their issue legitimized.

Arkansas and Tennessee passed no acts containing any discriminating provisions on account of color, and in both states negroes were granted civil rights. The Tennessee legislature through the influence of the East Tennessee Unionists at first declined to admit negroes to the witness box and later expressly forbade their service on a jury.[5]

The convention of 1866 in Texas inserted in the new constitution an article which granted to all persons of color full civil rights,

[1] Laws of Georgia, 1865–1866, p. 239.
[2] *Ibid.*, p. 232; *ibid.*, 1866, p. 151.
[3] *Ibid.*, 1865–1866, p. 232.
[4] *Ibid.*, 1865–1866, pp. 6, 234; *ibid.*, 1866, p. 153.
[5] "Annual Cyclopædia," 1866, p. 75.

including the right to give testimony in all cases affecting one of their race.[1] The legislature was also given power to extend negro testimony to other cases.[2] When the legislature met, an apprentice act was passed, similar in every respect to those already described, except that nowhere was there any mention of race or color. The labor law was quite stringent, providing for written contracts, which were required to be witnessed and recorded. Employers could make deductions for time lost, injury to property, or bad work; but the laborer had in all cases the right of appeal. One-half the crop was subject to a laborers' lien for wages, and the employer was liable for a fine to be paid to the employee for cruelty or non-fulfilment of the contract. Enticement of employees was punishable. Visiting without permission and absence without leave were forbidden.

The legislature of Virginia in 1865 and 1866 passed a vagrancy law defining as vagrants all persons who unlawfully returned to counties and towns from whence they had been lawfully removed; persons without means who refused to work for common wages; persons refusing to perform work allotted to them by the overseers of the poor; beggars, unless incapable of labor; persons from without the state who did not work and who had no visible means of support. All vagrants upon conviction were to be hired out for terms not exceeding three months, their wages to be applied to their support and that of their families. If they ran away without cause, the employer was entitled to their services free for one month beyond their term, and, with the permission of a magistrate, could use a ball and chain. General Terry declared that this law was passed in the interest of land-holders who wished to combine to keep down wages, and consequently, on January 25, 1866, he issued an order declaring that its effect would be to reduce the negroes to a worse state of servitude than before, and forbidding its enforcement.[3] By other laws it was provided that

[1] The legislation of Texas is discussed in some detail in Ramsdell, "Reconstruction in Texas," pp. 120–125.

[2] "Annual Cyclopædia," 1866, p. 741; Constitution of Texas, Art. VIII.

[3] McPherson, *op. cit.*, pp. 41–42; Lalor, "Cyclopedia of Political Science," Vol. III, p. 547.

contracts for labor for more than two months should be signed and acknowledged before an officer or two disinterested witnesses, and should be explained to the negro. Slave marriages were declared valid, and their issue were legitimized.[1] Most of the distinctions between the races were abolished, all provisions as to crime and punishment being applied equally and the phraseology of the laws changed so as to remove the element of discrimination. The right to testify in all cases in which a person of color was interested was granted without any strong objection anywhere in the state.[2]

North Carolina's legislation in regard to freedmen differed radically from that of the other states.[3] Prior to the war, free negroes had been citizens [4] and as such entitled to civil rights. The commission authorized by the convention of 1865 [5] presented a report to the legislature in 1866, recommending the passage of a bill defining persons of color, recognizing their citizenship, validating marriages, requiring contracts to be in writing, placing colored apprentices on the same footing with whites, with the one exception that former masters should have the preference in the case of colored orphans, forbidding intermarriage of colored persons with whites, and admitting persons of color as witnesses in all cases where the rights or interests of persons of color were involved, applying the criminal laws of the state to persons of color on the same terms as to white persons, with the one exception that an assault upon a white woman with the intent to commit rape, when committed by a negro, was a capital offense. The repeal of a vast number of laws was advised in order that the equality might be beyond dispute and to clear the law. This bill was passed practically without change.[6] The commission also recom-

[1] Laws of Virginia, 1865–1866, p. 85.

[2] The legislation of Virginia is discussed in Eckenrode, "The Political Reconstruction of Virginia," pp. 42–45.

[3] The legislation of North Carolina is discussed in Hamilton, "Reconstruction in North Carolina," pp. 152–156.

[4] State *v.* Manuel, 20 N. C. 20.

[5] The commission consisted of B. F. Moore, William Eaton, and R. S. Donnell.

[6] Laws of North Carolina, 1866, Chap. 40.

mended the passage of a number of laws, to meet the changes in social and economic conditions, applicable alike to black and white. They were designed, 1, to punish the pursuing of live stock with intent to steal the same; 2, to prevent wilful trespass upon lands and the stealing of property thereon; 3, to punish vagrancy; 4, to punish seditious language, insurrections, and rebellions in the state; 5, to secure to agricultural laborers their pay in kind; 6, to prevent the enticement away of servants or the harboring of them; and finally, 7, to establish houses of correction in the several counties. In none of these laws was there any racial discrimination. All of them were passed,[1] and none of them need special mention save the vagrancy act. This law was exceedingly mild and allowed any person found guilty to be released upon payment of costs and the filing of a bond for future good behavior. Otherwise he might be fined or sentenced to the workhouse.

Slight as the discriminations were, they were sharply condemned by the officials of the freedmen's bureau in the state, and because of them, jurisdiction in cases concerning the freedmen was denied the state courts. When the convention met in May, 1866, upon the recommendation of Governor Worth, it removed all discriminations.[2]

All the states passed laws defining persons of color, the classifications varying from one-fourth to one-sixteenth negro blood.

Such were the "Black Codes." Viewed to-day, at the distance of nearly half a century, they seem not only to have been on the whole reasonable, temperate, and kindly; but, in the main, necessary. Alexander Johnston, a critic certainly not biased in their favor, said of them: "Taken as a whole and considered as the work of men who had within a year been absolute masters of the freedmen, and who had been dispossessed of their control by war and conquest, it must be conceded that it exhibits remarkable self-control, public spirit, and equity." Some of the statutes of Mississippi and South Carolina were harsh, — that of the former

[1] Laws of North Carolina, 1866, Chaps. 35, 42, 57, 58, 59, 69, 64.
[2] Ordinances, p. 8.

prohibiting the leasing of rural lands, unreasonable and without justification, — and they were to a high degree impolitic; but the same cannot be said of the acts of the other states. Yet all were sweepingly condemned by public speakers and the press at the time and by writers for many years thereafter. The vagrancy and apprentice laws were criticized and condemned as an attempt to restore slavery, but reference to the laws of the various Northern states at the time will show not only the existence of equally severe ones in New England and elsewhere, but also that a number of the Southern statutes so harshly condemned were copied from them directly. In a large number of Northern states at the time the witness box was closed to persons of color, and there were many other discriminations.[1] The legalizing of the terms "master," "mistress," and "servant" caused horror in the minds of Blaine and other politicians, and probably in others less interested in molding public sentiment against the South, but the terms were to be found in the law of practically every Northern state as well as in that of England.

Already it has been intimated that to the Northern Radicals the Southern legislation came as a welcome aid in carrying out a policy already determined upon. It had small part in shaping policy, but it was exceedingly important in procuring the success of that policy. The extreme measures were held up to public view as typical, and the mass of the people and many members of Congress never knew that only a part had been shown and that part distorted and misrepresented. Still less did they comprehend the motive and spirit of the South and the underlying necessities of the case. With Mississippi's code to use as an example, it made no difference that Tennessee and Arkansas had no codes; that Virginia's action was mild; that North Carolina's was not at all open to attack, being all that could be demanded in reason and justice by any one, and going further in the direction of equality before the law than a large number of Northern states. Argu-

[1] This whole question has been admirably treated in Garner, *op. cit.*, p. 119 n.; Stone, *op. cit.*, pp. 203–211; and Herbert, "Why the Solid South," pp. 31–36. Lack of space prevents discussion in detail here.

ments and pretexts, not facts, were wanted, and in the current accounts of Southern legislation it was easy to find them. And still it would be incorrect to say that all this was deliberate. It was not. Partisans were in control who in a partisan way sought party advantage. In alliance with them was a heterogeneous group of humanitarians, negrophiles, and idealistic sentimentalists, all theorists and most of them drawing conclusions based on false premises. Moreover, the country was just recovering its balance after a civil war of great bitterness. Add to this the fact that both groups mentioned steadfastly refused to believe — that they were from prejudice and ignorance incapable of believing — that any one in the South could have worthy motives, kindly feeling to the negroes, or any sincerity in acceptance of defeat and its consequences, and it no longer remains a cause for wonder that the "Black Codes" should have been made the justification for venomous attack and harsh legislation.

VII

CARPET-BAGGERS IN THE UNITED STATES SENATE

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VII

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The careers of the carpet-baggers in the South have been told in many tales — how they fed on the fat of a lean land and gathered up all the choice plums of office. The most coveted of all in their eyes was of course a seat in the United States senate. The disqualification of the office-holding class in the South opened up to them hundreds of state and federal offices from sheriff to United States senator in every Southern state. This fact, together with the sudden creation of an ignorant and inexperienced electorate, — both immediate results of the reconstruction policy of Congress, — brought the carpet-baggers in swarms to the South. They were for the most part young men of the disbanded federal armies who went south after the war in search for offices, but they were reënforced by speculators who were tempted by the allurements of cheap land and high-priced cotton; some came also as missionaries to the blacks, many of whom found in politics a more bountiful harvest than in religious activities. A position as official of the freedmen's bureau, treasury agent, or military officer was a stepping stone to a seat in the legislature, the governor's chair, or the United States senate. Coöperating with Republicans from the North in gathering up the votes of the negroes were the native white Republicans, locally known as "scalawags." These two classes together shared the spoils of office, now and then throwing a sop to the "loyal" horde of negro voters by allowing them some local offices and seats in the legislatures. But in the United States senatorship the carpet-bagger obtained a larger prize than his scalawag brother.

During the third session of the 40th Congress twelve senators chosen by the reconstruction legislatures of North Carolina, South Carolina, Florida, Alabama, Arkansas, and Louisiana took their

seats in the United States senate. Of this delegation all but two, one from South Carolina and one from North Carolina, were carpet-baggers. Mississippi, not admitted until the second session of the 41st Congress (1870), was represented by two carpet-baggers, one of whom was a negro preacher. The height of carpet-bag power in the senate was attained in 1869–1873, during Grant's administration, when the harvest of federal offices was bountiful and before dissension among the Republicans of their foster states weakened the prop on which the carpet-bag senators supported themselves. After 1871 their ranks began to thin, and no new carpet-baggers appeared in the senate after 1873.[1] To present a brief survey of the part played by these Republican adventurers in the United States senate before 1873 is the purpose of this paper.[2]

In personnel the carpet-baggers who appeared in the senate were a mixed lot; some few were quite respectable and able men; several were thoroughly dishonest and corrupt, and the majority mere non-entities. Most of them were comparatively young men, under forty-five, and about half were college graduates. Willard Warner of Alabama and Frederick Sawyer of South Carolina were the best representatives of the carpet-bag

[1] One exception to this is the case of Pease of Mississippi, who served out the unexpired term of Ames, resigned.

[2] The list of carpet-baggers in the senate between 1868 and 1879 is as follows:

North Carolina. — John C. Abbott, 1868–1871.
South Carolina. — Fredk. A. Sawyer, 1868–1873. John J. Patterson, 1873–1879.
Florida. — Thos. W. Osborn, 1868–1873. Simon B. Conover, 1873–1879.
Adonijah S. Welch, 1868–1869. Abijah Gilbert, 1869–1875.
Alabama. — Geo. E. Spencer, 1868–1879.
Willard A. Warner, 1868–1871.
Mississippi. — Adelbert Ames, 1870–1874. H. R. Pease, 1874–1875.
Hiram R. Revels, 1870–1871.
Louisiana. — John S. Harris, 1868–1871. J. R. West, 1871–1877.
Wm. Pitt Kellogg, 1868–1872; 1877–1883.
Arkansas. — Alex. McDonald, 1868–1871. Powell Clayton, 1871–1877.
Benj. F. Rice, 1868–1873. S. W. Dorsey, 1873–1879.

The number of carpet-baggers in the senate in each Congress was as follows:

40th Congress — 10	42d Congress — 9	44th Congress — 6
41st Congress — 12	43d Congress — 8	45th Congress — 5

group. Warner of Ohio, a graduate of a small college in that state, went to Alabama in 1865 after being mustered out of service in the federal army. He was unlike his carpet-bag colleagues in two respects — he owned property in Alabama when he became senator, and he had held office in his native state, — in fact, his seat in the Ohio legislature was hardly vacant before he presented himself in Washington with credentials from Alabama.[1] In Washington his colleagues recognized him as far superior to the other representatives from the Southern states. He was placed on the important committee of finance and in the debates in the senate conducted himself with dignity and good sense, and did not always vote blindly with the radicals. It was to his credit that the successful wing of the Republican party in Alabama, led by Spencer, his colleague, turned against him and refused to reëlect him when his term expired in 1871. The Democrats of Alabama were less hostile to Warner than to any other prominent Republican in the state. Another sure sign of respectability was that he was not compelled to leave Alabama after the restoration of home rule, but remained there until 1890, where he was interested in coal and iron industries.[2] Warner and Sawyer of South Carolina were the only carpet-baggers who gave evidence that they represented the interests of the states which sent them to the senate. Sawyer was by no means as able as Warner in practical politics, though he was far above the average carpet-bagger in intelligence and integrity. A Harvard graduate and school teacher in New England, superintendent of the City Normal School of Charleston in 1859, a resident of the North during the war, collector of internal revenue at Charleston in 1865 — this was his history before he went to the United States senate. There he was markedly conservative for a carpet-bagger; among other things he introduced measures looking towards a more generous amnesty.

[1] "Biographical Congressional Directory," p. 867; Report of Joint Select Committee to inquire into the condition of affairs in the late insurrectionary states [Kuklux Committee], Vol. VIII, pp. 33–34; Fleming, "Civil War and Reconstruction in Alabama," p. 737.

[2] Rept. Kuklux Committee, Vol. IX, p. 888; White, "Biographical Dictionary," Vol. X, p. 396.

In South Carolina in the factional fight among the Republicans in 1872, Sawyer stood with the moderate and less corrupt wing of the party.[1]

As Warner and Sawyer represented the better class of carpet-baggers, the most notorious of the other sort was William Pitt Kellogg, senator and sometime governor of Louisiana. His chief claims to notoriety, however, rest on his spectacular career in Louisiana. In 1872 he resigned from the senate to enter into the fight-to-the-death conflict for the control of Louisiana, as the candidate for governor of the party led by S. B. Packard, United States marshal, and the federal office holders, against Governor Warmouth and the state officials. Kellogg in the senate was a staunch partisan of President Grant, and in Louisiana he and his friends profited by Grant's use of United States troops. At the close of the Reconstruction period in Louisiana, Kellogg, by illegal measures, was returned to the senate, serving until 1883. In the senate as a member of the committee on the Pacific Railroad, Kellogg was in a position to serve his fellow carpet-baggers and his land-grabbing constituents in Louisiana by pressing multitudinous railway bills.[2] The last of the carpet-baggers to cling to a seat in the senate, Kellogg appeared as a sort of relic of the chaos and anarchy that went under the name of Reconstruction in the South.

George E. Spencer, of Massachusetts, Ohio, Iowa, Nebraska, and Alabama, was typical of the carpet-baggers who used their senatorial office for what they could get out of it, for themselves and their friends. In 1872 he secured a reëlection by the most wanton corruption and daring manipulation of the Alabama legislature. With complete control over the patronage in Alabama, the funds of the Mobile post-office and the internal revenue offices at Mobile and Montgomery were his to command.[3] It was men of the type of Spencer, shrewd, vulgar, and unprincipled, that

[1] "Biographical Congressional Directory," p. 784; Reynolds, "Reconstruction in South Carolina," p. 111.

[2] Rhodes, "History of the United States," Vol. VII, pp. 109–112. See Congressional Globe, 41st and 42d Congresses, for various bills for land grants to railroads introduced by Kellogg.

[3] Fleming, "Civil War and Reconstruction in Alabama," pp. 737, 755–759.

made the resources of the Southern states during the Reconstruction period one huge jack-pot to be won by the player most expert at cheating. Aside from voting and work on the outside, Spencer was an inactive figure in the senate.

When Mississippi after a prolonged process of reconstruction was allowed to choose representatives to the second session of the 41st Congress, two carpet-baggers appeared to represent her in the senate, one of whom was a negro, the Rev. Hiram R. Revels, the first of his race to win a seat in that body. The negrophiles of the North looked upon the day when a black man should take the place once occupied by Jefferson Davis as a red letter day in the calendar of human progress. To make the tragic — or comic — irony of the situation complete, they insisted that the particular seat in which Mr. Davis had once sat should be assigned to Revels, but to their chagrin the senator who held the seat refused to yield.[1] Senator Wilson of Massachusetts presented the credentials of Revels, and Senator Sumner, needless to say, did not neglect the opportunity to pour forth his "flow of turgid rhetoric." When the question of admitting Revels was before the senate, the Massachusetts senator said — "All men are created equal, says the great Declaration, and now a great act attests its verity. To-day we make the Declaration a reality. For a long time a word only, it now becomes a deed. For a long time a word only, it now becomes a consummated achievement. . . . — What we do to-day is not alone for ourselves, not alone for that African race now lifted up; it is for all everywhere who suffer from tyranny and wrong; it is for all mankind; it is for God himself, whose sublime fatherhood we most truly confess when we recognize the Brotherhood of Man." [2]

Revels' colleague, Adelbert Ames, a brevet brigadier-general in the army, was appointed provisional governor of Mississippi in 1868. His only claim to citizenship in the state came from his residence there as a military officer. His credentials as United States senator were signed by Adelbert Ames, provisional gover-

[1] Garner, "Reconstruction in Mississippi," p. 275, footnote.
[2] Cong. Globe, 41st Cong., 2d Ses., p. 1567.

nor.[1] On the judiciary committee, to which the question of accepting his credentials was referred, the only member who supported Ames was Rice, a carpet-bag senator from Arkansas.[2] When the question came to a vote, nine of the eleven carpet-baggers supported their colleague from Mississippi.[3]

On the whole, the course of legislation in the senate in the 41st and 42d Congresses was but slightly affected by these nineteen members, either individually or collectively. None won distinction in debate, some preferred a reputation for wisdom by silence, and most of them were shelved on unimportant committees. With few exceptions they took their stand firmly on the side of the radical Republicans, and in 1870 and 1871 when the Republican ranks were split into hostile factions, they were found among the administration supporters — for there lay patronage, the *summum bonum* of their senatorial ambitions.

The first matter of legislation in which the carpet-baggers played a part was the Fifteenth Amendment. It naturally behooved those whose senatorial existence depended on the votes of their black constituents to raise their voices in behalf of the rights of the negro. Their support was given almost unanimously to the various propositions, more stringent than the resolution finally adopted, which guaranteed to the negro the right to hold office as well as the right to vote, and also those which safeguarded the franchise against restriction on account of property, education, etc.[4] The Amendment as finally agreed upon, containing, as it did, no provision as to office holding, failed to satisfy the senators from the South, though most of them voted to accept it. On its final passage, however, three — Abbott of North Carolina, Sawyer of South Carolina, and Spencer of Alabama — followed Sumner's example and refrained from voting.[5] Willard Warner of Alabama, the ablest and most experienced of the carpet-bag senators, took an active part in the debate and offered a resolution

[1] Cong. Globe, 41st Cong. 2d Ses., p. 2125; Garner, "Reconstruction in Mississippi," pp. 213–214, 275.

[2] Globe, 41st Cong., 2d Ses., p. 2052.

[3] *Ibid.*, p. 2349.

[4] Globe, 40th Cong., 3d Ses., pp. 1040; 1318.

[5] *Ibid.*, p. 1641.

to safeguard from all possible infringement the right of the negro to hold office and to vote. In support of his resolution he delivered an able speech, holding that the nationalization of the suffrage was an essential element of true democracy; it was not a mere question of negro suffrage, but a necessary means of defending the equality of all citizens white and black, not excluding women.[1] Other senators from the reconstructed states who spoke in favor of the Fifteenth Amendment made their plea entirely for the downtrodden black man. Mr. Adonijah Welch, in a high-flown speech, paid tribute to the negro race.[2] Abbott of North Carolina gave his assent to the Amendment in a plain, unillumined speech, arguing that such a measure was both equitable and expedient, and one fully sanctioned by the constitution.[3] Sawyer of South Carolina expressed his mind forcibly against the resolution eliminating the right to hold office from the sphere of national protection. He considered it a failure of the Republican party to safeguard the just rights of the negro.[4]

On questions dealing directly with the Southern states, senators from those states voted steadily with the radicals against the moderate Republicans. On the resolution of Oliver P. Morton that Virginia, Texas, and Mississippi should be required to ratify the Fifteenth Amendment as a prerequisite to readmission, all the carpet-baggers voting, voted affirmatively, with the exception of Sawyer, who frequently showed signs of conservatism.[5] In 1870 the fight on the Georgia bill brought out clearly the demarcation between the radicals and the moderates in regard to further reconstruction in the South. There were several propositions under consideration — one, the so-called Bingham Amendment, to admit Georgia immediately, securing to the state its right according to its constitution to hold an election in December, 1870. The purpose was to thwart the scheme of General B. F. Butler, acting under the beguiling influence of Governor Bullock and his supporters from Georgia, to prolong the tenure

[1] *Ibid.*, pp. 861–862.
[2] *Ibid.*, pp. 981–982.
[3] *Ibid.*, pp. 980–981.
[4] *Ibid.*, p. 1629.
[5] Globe, 41st Cong., 1st Ses., p. 656.

of the Georgia legislature two years beyond its ordinary term and to continue the acting administration as provisional. It was a matter of common knowledge that the Georgia governor and his supporters were playing fast and loose with Georgia bonds in Washington to secure support for their prolongation scheme.[1] With this in mind it is significant that on every vote of importance six of the carpet-bag senators, — Revels from Mississippi, Spencer from Alabama, the two Florida and the two Arkansas senators — all stood firmly by the prolongation party, and three others, Warner, Ames, and Abbott, voted for prolongation until it was apparent that it could not carry. Sawyer and Kellogg were with the moderates on this question.[2]

Revels, the negro senator from Mississippi, who was admitted to his seat on February 25, 1870, took advantage of the opportunity offered by the Georgia bill to make his maiden speech on March 16. The galleries were crowded with members of his race, for notice had been given in the colored churches of Washington that Senator Revels would speak. The *Nation*, in commenting on this event, said it was "an incident with a good deal of pathos in it, whatever the quality of the speech may be, and however one may wish, for the sake of his race, that he had fairly won his position, instead of being, as it were, flung into it." [3] Revels was aware of the mighty significance of the moment when a negro should rise to speak in the place once occupied by Davis and Toombs, and spoke in the consciousness that the ears of all his race and of the Northern friends of equality were open to him. After a long preamble, in which he paid a glowing tribute to the black race and denied the existence of any racial antipathy against the whites, he announced his position as favoring the measure to prolong the tenure of the Georgia legislature.[4]

The enforcement act of 1870 [5] and the Kuklux bill of 1871 [6] both brought out the full support of the carpet-bag senators.

[1] The *Nation*, May 26, 1870; White, "Life of Lyman Trumbull," pp. 299–300.
[2] Globe, 41st Cong., 2d Ses., pp. 2677, 2820, 2821.
[3] *Nation*, March 17, 1870.
[4] Globe, 41st Cong., 2d Ses., pp. 1986–1988. [5] *Ibid.*, p. 3809.
[6] *Ibid.*, 42d Cong., 1st Ses., p. 831, and N. Y. *Tribune*, March 16, 1871.

They likewise stood by Sumner in his various attempts to secure the enactment of the supplementary civil rights bill to insure to the negro equal rights in hotels, theaters, public carriers, public schools, etc.[1]

The real center of interest of every carpet-bagger — and in that respect he was not very different from many of his older colleagues of the senate — was the spoils of office. Under Lincoln it had become customary to apportion the great body of appointments among members of Congress of the party in power, and under Grant this practice became more thoroughly systematized. Republican members of the house controlled local appointments in their respective districts, while to senators fell the allotment of offices for the state-at-large and to some extent of those in the districts represented by Democrats. According to the practice of "senatorial courtesy," nominations by the President were referred to the senators of the state in which the office was located. Thus United States senators became practically the distributors of all federal offices in their states.[2] To the carpet-bagger with no understanding of important national questions, with no deep-seated interest in the welfare of his adopted state, and dependent as he was for his position as senator on returning favors to those who favored him, the distribution of offices became the prime necessity of senatorial living. All the carpet-bag senators from the Southern states showed an immediate interest in the repeal of the tenure of office act in the first session of the 41st Congress, for with the act still in force Grant's hands were tied and the Johnson appointees could cling to their offices while loyal applicants besought their carpet-bag friends in vain. In the early part of Grant's administration the carpet-bag senators showed resentment that they were ignored in the distribution of offices and complained that patronage even in their own states was in the hands of more influential senators from the East and West.[3] An opportunity to air their grievances came in April,

[1] *Ibid.*, 42d Cong., 2d Ses., p. 3736. Only two carpet-baggers voted in favor of the amnesty act, passed May 21, 1872. *Ibid.*, p. 3738.

[2] Foulke, "Life of Oliver P. Morton," Vol. II, pp. 210–211 and footnote.

[3] *Nation*, April 29, 1869.

1869, when Senator Carpenter of Wisconsin introduced a resolution providing that heads of departments should be required to furnish information regarding offices and clerks in their departments, from what states they were appointed and upon whose recommendation. Abbott of North Carolina was aroused immediately to press the interests of the Southern representatives. Regarding the position of senator as primarily that of office-monger, he wished to make certain that the offices should be apportioned among the states on the basis of population instead of according to the relative importance of their senators to the administration. Hence he introduced the following amendment to the resolution before the senate: "That in the opinion of the senate the distribution of the official patronage of the government not embraced in local offices in the states should be made as nearly equal among all the states, according to their representation and population, as may be practicable; and that to confine such patronage to particular states or sections, either wholly or partially, is both unjust and injudicious." [1]

That the new senators from the reconstructed states had been ignored by the administration and by their colleagues, who were responsible for the régime in the South that sent the carpet-baggers to Congress, is evident from the open expression of their grievances. Senator Sawyer of South Carolina, in speaking on the Carpenter resolution, protested against the treatment of himself and his fellows. The senators from the newly reconstructed states have no patronage, he said, and are told that they represent nobody.[2]

The dissatisfaction of the carpet-baggers manifested itself towards the end of 1869 by hostility to the attorney-general, E. Rockwood Hoar, who controlled the appointment of many district attorneys and marshals in the Southern states. Moreover, Judge Hoar had the reputation of being excessively unapproachable to senatorial advisers. His rigid integrity and old-fashioned notion that the public service was for the benefit of the public instead of to reward partisans were constant sources of

[1] Globe, 41st Cong., Extra Ses., p. 738. [2] *Ibid.*, pp. 740–741.

irritation to senators, Northern as well as Southern, who had a throng of hungry office-seekers begging at their heels. The Southern senators were aggrieved that their states did not get a fair share of appointments in the department of justice, nor did the judgments of the attorney-general and theirs always agree as to the fitness of applicants. Judge Hoar himself declared that he had great difficulty in finding persons in the Southern circuit who combined both ability and loyalty. "My situation," he said, "was somewhat like that of the parish committee who went to a divinity school in search of a minister, and were told by the president that the students fell readily into three classes, those who had talents without piety, those who had piety without talents, and those who had neither." [1] In December, 1869, when the new judiciary act provided for an additional justice of the Supreme Court, President Grant sent to the senate the name of Judge Hoar. In the judiciary committee, to which the nomination was referred, Senator Trumbull alone supported the nomination. Rice of Arkansas, a member of the committee, opposed the nomination of Hoar with great vigor. But Rice's vote was natural, as no one, said the *Nation*, expected high political morality from carpet-bag senators.[2] The day after the hostile reception of Hoar's nomination in the senate, Jacob D. Cox, secretary of the interior, wrote to Judge Hoar from Washington that opposition to him was evidently organized — a few Northern Republicans, all the Southern senators, except Warner, together with the natural opposition of the Democrats, made the majority against him.[3] President Grant stood firm in spite of the opposition in the senate, and refused to withdraw Judge Hoar's name; so on February 3, 1870, the nomination was formally rejected.[4] The Southern senators and others voting against Hoar objected to him ostensibly on the ground that there was no judge on the bench from the South, and that the appointee ought to reside in the Southern circuit over

[1] Storey and Emerson, "Ebenezer Rockwood Hoar, A Memoir," p. 181.

[2] Jan. 6, 1870.

[3] Storey and Emerson, "Ebenezer Rockwood Hoar," p. 191.

[4] The New York *Tribune*, Feb. 4, 1870, says that Warner and Gilbert were the only Southern senators in favor of Hoar.

which he must preside. This was clearly but an excuse and not a reason, for they did not reject Bradley, who was named in Hoar's stead, though he was no more a resident of the Southern circuit than Hoar was.[1] Indeed, the carpet-baggers' insistence on residence as a prerequisite to governmental office was naïvely comic. "It shows, too," said the *Nation*, "that the carpet-baggers, besides being unscrupulous, are unblushing. Decency required them to try and cover up their treatment of Judge Hoar by dealing out the same measure to Mr. Bradley." [2]

But the fight on the watch dog of the department of justice was not ended with their rejection of his nomination to the Supreme Court. The opportunity of the carpet-baggers came in connection with President Grant's scheme to annex San Domingo. The President exerted every influence at his command to overcome the opposition of the senate, especially that of Sumner, chairman of the committee on foreign relations. The Southern senators, not particularly interested in national policies of any kind, but always thirsting for patronage, were willing instruments in the hands of the President. To further their interests the carpet-baggers demanded a place in the cabinet for the South. They desired especially the office of attorney-general, since there in particular lay the chief obstacle to the control of the offices. So a bargain was struck — a Georgia man was appointed attorney-general, which meant a greater share of patronage for Southern senators, and they in turn were to support Grant's San Domingo scheme.[3] Apparently the terms of the compact were faithfully observed on both sides.

Another element in the situation, the relation of the carpet-bag senators to Sumner, is clarified in the account which Hoar's biographers give.[4] "It appears that some 'carpet-bag' senators told the President that, while they would gladly please him, Mr. Sumner had such controlling influence over their colored constit-

[1] Hoar, "Autobiography of Seventy Years," Vol. I, p. 306.

[2] The *Nation*, March 31, 1870.

[3] Storey and Emerson, "Ebenezer Rockwood Hoar," pp. 207, 210. This is based on an account given by Jacob D. Cox in the *Atlantic Monthly* for Aug., 1895.

[4] *Ibid.*, p. 211.

uents that it was dangerous for them to oppose him on the San Domingo question. They were disappointed in the help they expected from the administration in the form of patronage to smooth over opposition. Grant demanded to know by whom they were ignored. They replied that it was the attorney-general, and they requested that he be displaced by a Southern man." Among the Southern negroes the name of Charles Sumner was still one to conjure with. But it did not take the practical senators from the South long to learn that in the senate of 1869 it was more profitable to line up with Morton and Conkling and Cameron than with the doctrinaire Sumner, who was frequently more absorbed in some trifling matter of mere principle than in securing the rewards of favoritism. So when the break came between Grant and Sumner over the San Domingo question, which led to the removal of Sumner from the chairmanship of the committee on foreign relations by the caucus of Republican senators, the support of most of the carpet-baggers was given to the anti-Sumnerites.[1] From this time forth, the carpet-bag senators, realizing that they could not serve two masters, chose Grant, and with few exceptions they were ready to support the administration.

As was to be expected the Southern senators gave no support to the movement of 1871 to reform the civil service, and in 1872 only two of their number voted for the appropriation to continue the civil service commission.[2]

Next to the matter of patronage the activity of the Southern senators was devoted to securing grants of public lands to railroads, present and future: 1869 and the years following constituted the period of railroad mania. With the completion of the Union Pacific, six or eight other lines were projected to cross the continent and as many more to traverse the country from North to South.[3]

[1] Globe, 42d Cong., 1st Ses., p. 52. On the test vote in the senate four carpet-baggers refrained from voting against Sumner. In the caucus, on the motion to restore the name of Sumner to the chairmanship, two carpet-baggers voted in favor, Gilbert and Spencer. See N.Y. *Tribune*, March 10, 1871.

[2] Globe, 41st Cong., 3d Ses., p. 292; 42d Cong., 2d Ses., pp. 1502, 1575.

[3] The *Nation*, March 11, 1869.

The project which most engaged the attention of the carpet-baggers was the Southern Pacific Railroad. A proposition to grant lands to a transcontinental railway through Texas to California was fathered by Kellogg of Louisiana, warmly supported by Spencer, Sawyer, and Warner in debate and by others by their votes. Spencer tried to find cover under the Southern Pacific bill for a grant of land to a local Alabama railway, while Kellogg pushed the claims of a road from New Orleans to the terminus of the transcontinental line. Other carpet-baggers tried to secure subsidies to various local railroad projects, on the ground that they would be feeders for the Southern Pacific and so would serve the national as well as local interests.[1] Senator Morrill of Vermont, growing impatient at these attempts of the Southern senators, declared that if it were the policy of the senate to incorporate on the Southern Pacific a hundred branches of local roads, he would present the following proviso as a short cut to action: "Provided, that anybody in any state may have power to build a railroad from one spot to another spot, and shall have all the lands adjoining, not claimed by any other railroad."[2] In addition to the Southern Pacific in which all the Southern senators coöperated, almost every carpet-bagger presented a long list of bills to secure subsidies to local railway corporations, existing or prospective. Kellogg of Louisiana, occupying a favorable position as member of the committee on the Pacific railroad, became a special promoter of railway aid bills. McDonald and Rice of Arkansas were both active in railway legislation, and so were Osborn of Florida, Spencer of Alabama, and Abbott of North Carolina.

These senators likewise exhibited an unusual readiness to press private claims of their constituents. The roll of bills or resolutions introduced by the carpet-bag members in the 41st and 42d Congresses deal almost entirely with railroad grants and private claims.

The new members from the reconstructed states did not find as warm a welcome as they expected from their Republican col-

[1] Globe, 41st Cong., 2d Ses., pp. 4719–4722, 4638, 4644.
[2] *Ibid.*, p. 4720–4721.

leagues, who were so largely responsible for the conditions which sent them to the senate. They found themselves on the defensive and were forced more than once to justify their presence in a representative assembly.[1] From the Democratic members they heard taunts like the following flung at them:[2] "But few as we (Democrats) are, I thank God to-day that not one of us sits here thrust into this senate by the bayonets of the standing army of the United States over the breasts of a downtrodden and helpless people." But expressions of contempt were not confined to the other side of the chamber. Some of the older Republican members occasionally expressed their disgust at the carpet-bag accessions from the South.[3] So staunch a Republican as Senator Wilson of Massachusetts said on one occasion: "Mr. President, we have been told, if I rightly understand the senator from South Carolina, that the 'natural leaders' of the South should come back here. Well, sir, I shall not object to them. On the contrary, I am growing a little stronger in the opinion that it would be well for us to have some of them here."[4]

In conclusion it may be said that the part played by the carpet-baggers in the United States senate was comparatively slight in respect to legislation of a truly national interest. Though at one time they constituted nearly one-seventh of the senate, their dominance in number occurred at the time when the large Republican majority in the senate would not have been endangered, even had their seats been filled by Democrats. Moreover, before the Liberal Republican movement of 1872 the anti-Grant Republican faction in the senate was so small and impotent that the carpet-baggers even then did not hold the balance of power on important questions.

The general moral tone of Congress during Grant's administration was excessively low. With the settlement of the great slavery issue and the achievement of the principle of nationality,

[1] See Ames's defense of the Carpet-bagger, Globe, 42d Cong., 2d Ses., App., pp. 393 *et seq.*

[2] Globe, 41st Cong., 2d Ses., p. 1562. Casserly of California.

[3] The *Nation*, Jan. 13, 1870.

[4] Globe, 41st Cong., 2d Ses., p. 335.

the attention of Congress was devoted largely to matters of local or personal interest, to the consideration of private bills, to land grants to multitudinous railroad companies, etc. Even questions of wider import were bound up with the political fortunes of the administration.[1] In the senate of the 41st Congress and later, men of statesmanship and disinterested public vision, like Lyman Trumbull, counted for little under the leadership of straight-out party politicians like Oliver P. Morton and Simon Cameron. The senate of 1869 was not therefore a suitable training school in which to discipline men like Spencer and Kellogg, who were unprincipled and corrupt to begin with. On the other hand, the entrance into the senate of such a large body of men, twelve at one time, did much to encourage the growth of corrupt practices. In general, the carpet-baggers stood together in support of the worse, rather than the better, matters of legislation.

[1] Merriam, "Life and Times of Samuel Bowles," Vol. II, pp. 87–88; *Nation*, March 9, 1871.

VIII

GRANT'S SOUTHERN POLICY

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To the mind of General Grant the chief object of the Civil War was the annihilation of rebellion. In the matter of slavery he had never taken any interest before the war. "I never was an abolitionist, not even what could be called anti-slavery," he said in 1863.[1] As Lincoln and Congress developed their abolition program, Grant came to the conclusion that there could be no permanent peace between the North and the South unless slavery was abolished. This conviction was based not at all on humanitarian zeal, but simply on Grant's perception that the continuance of slavery would produce interminable political dissension.[2] In his orders issued during the war concerning slaves and freedmen[3] we see only common sense dealing with a practical exigency, a kind heart, and, above all, the soldier's desire to execute the orders of his superiors, the President and Congress. Of far more vital interest to Grant than the abolition of slavery was the destruction of the power of the Confederacy, the extirpation for all time of disobedience to the national government.

After the war Grant had at first no share in the desire of many Northern men for measures that should prevent the lessons of the war from being forgotten and its results from being lost. There seemed to him no necessity for such measures. "The mass of thinking men of the South," he said, "regard as having been settled forever" the questions of slavery and secession. The thing to do, then, was to forgive and forget, and as soon as possible to restore orderly self-government in the South. He believed, to be sure, that for a time the public safety required that the federal army

[1] McPherson, "Handbook of Politics," 1868, p. 294.
[2] Grant's "Memoirs," Vol. II, pp. 542–543.
[3] McPherson, 1868, pp. 293–294.

should remain in the South; and through the agency of the commanders in the South he took various measures during 1865 and 1866 for the maintenance of the public peace, for the prevention of injustice, and for the upholding of the authority of the national government — measures vigorous when he deemed such necessary, but moderate on the whole. "You will instruct General Foster," he wrote to Sheridan, "to refrain from interference with the execution of civil law in Florida. . . . The duty of the military is to encourage the enforcement of the civil law to the fullest extent." [1]

The devising of a political policy that should carry out his wishes in regard to the South he left to others. "I am not a politician, never was, and hope never to be," he had said in the letter declaring his unwillingness to be President. And later he said, "I have always been attentive to my own duties and tried not to interfere with other people's. . . . I originated no plan and suggested no plan for civil government." Johnson's plan of reconstruction, however, once put into force, received Grant's hearty approval.[2]

When the breach occurred between the President and Congress, Grant changed his view and gave his vigorous support to the Congressional policy of reconstruction. He was caught by the general current of apprehension that, through the conduct of President Johnson as the champion of the Southern states, and through the consequent alliance between the solid South and the Northern Democracy, the results of the war would be lost; and he saw in negro suffrage, which he had never before favored, the only means of averting this danger.[3] So he threw his energies heartily into the reconstruction of the Southern states under the acts of 1867, urging the district commanders to carry out both the letter and the spirit of those acts, and giving them voluminous counsel as to how this was to be done. Vindictiveness and ill will toward his late enemies was totally absent from his mind; he directed the

[1] McPherson, 1868, pp. 67, 122–124, 199, 298–310. "Memoirs," Vol. II, p. 511.
[2] McPherson, 1868, pp. 295–302.
[3] "Memoirs," Vol. II, pp. 511–512.

course of reconstruction with fairness and consideration for the welfare of the South so far as was compatible with the success of the process. And after he became President, he took the lead in hastening the restoration to the Union of the states which had not yet formally completed their reconstruction.[1]

"We congratulate the country on the assured success of the reconstruction policy of Congress," said the resolutions of the Republican convention of 1868. Yet, the resolutions continued, the Southern question was by no means disposed of by this "success." The institutions set up in the Southern states by Congress must be protected; the national government must prevent those states from "being remitted to a state of anarchy"; "the guaranty by Congress of equal suffrage to all loyal men at the South . . . must be maintained"; "the removal of the disqualifications and restrictions imposed upon the late rebels" must be removed only "in the same measure as the spirit of loyalty will die out, and as may be consistent with the safety of the loyal people."[2]

Grant declared himself in accord with these resolutions.[3] At the same time, in accepting the nomination for the Presidency, he expressed the desire that his administration would give "peace, quiet, and protection everywhere" — a desire that he kept reiterating in his public utterances during the following eight years. He did not perceive the incompatibility between the Republican program and his exhortation, "Let us have peace." He saw, indeed, that the suffrage question would be a source of trouble until it was settled; but he hoped that, when it was settled by the adoption of the Fifteenth Amendment, the trouble would cease.[4] He did not foresee that his conscientious efforts to sustain the results of reconstruction and to prevent the Southern states from "being remitted to a state of anarchy" were to aggravate and prolong the anarchy that had already been created by the Congressional policy; he did not foresee the reign of bloody violence

[1] McPherson, 1868, pp. 293–314; 1870, pp. 417, 532.
[2] *Ibid.*, 1868, p. 364.
[3] *Ibid.*, 1868, p. 365.
[4] *Ibid.*, 1870, p. 416.

that was to prevail through the South for eight years as the result of the "success" of reconstruction.

When he did perceive the mutual inconsistency of his desire for peace and his purpose to carry out the Republican program, it was too late for him to abandon that purpose; for the Republican program was then embodied in the law, and the law must be obeyed. In his first inaugural address he said, "All laws will be faithfully executed whether they meet my approval or not. . . . Laws are to govern all alike — those opposed as well as those who favor them. I know of no method to secure the repeal of bad or obnoxious laws so effective as their stringent execution." [1] The soldier's spirit of obedience — unquestioning obedience to law, whatever might be the consequences — was the chief factor in all Grant's dealings with the South during his presidential term. With the framing of a Southern policy he had scarcely any more to do after he became President than in 1865. Even when he appeared to be an initiator, he was the agent, not the leader, of his party. The few Southern measures that he recommended to Congress were merely steps in a process initiated by others, and were recommended as means of securing obedience to laws previously enacted.

His recommendation of the Force Act of April 20, 1871, the so-called Kuklux Act, is an example. In March, 1871, he was appealed to by the governor of South Carolina for military aid in suppressing crime and violence. Grant gave the assistance requested, acting under the then existing law authorizing the President to protect the government of a state from insurrection.[2] He took this action, though he doubted whether it was strictly legal, for the law authorized the suppression of "insurrection," and his action was directed simply at crime and violence. Conditions similar to those in South Carolina existed in many other parts of the South; and Grant saw that, if his action was to be limited to putting down resistance to state governments, his hands would in many cases be tied, and there would be no means of preventing violation of the Fourteenth and Fifteenth amendments. Accord-

[1] McPherson, 1876, p. 416.

[2] *Ibid.*, 1872, p. 12.

ingly, at the same time that he responded to the appeal of the governor of South Carolina, he sent a special message to Congress urgently requesting that a law be enacted giving the President adequate power to prevent such violation of the constitution.[1] The Kuklux Act was the result.

Soon after the passage of this act Grant issued a proclamation (May 3, 1871) calling the attention of "the people of the United States" to it. Its enactment, he said, had been made necessary by "persistent violations of the rights of citizens of the United States by combinations of lawless and disaffected persons in certain localities lately the theatre of insurrection and military conflict." "I do particularly exhort the people of those parts of the country," he said, "to suppress all such combinations by their own voluntary efforts through the agency of local laws." He was "fully sensible of the responsibility" imposed on him, and "reluctant to call into exercise any of the extraordinary powers" conferred by the new law; yet he deemed it his duty to make known that, when it was necessary, he would "not hesitate to exhaust the powers thus vested in the executive." He concluded the proclamation thus: "It is my earnest wish that peace and cheerful obedience to law may prevail throughout the land, and that all traces of our late unhappy civil strife may be speedily removed. These ends can be easily reached by acquiescence in the results of the conflict, now written in our Constitution." [2]

The extraordinary power conferred upon the President by the Kuklux Act — the power to suppress disorders in a state by military force on his own initiative, and to suspend the operation of the writ of *habeas corpus* — Grant exercised in only one instance — the famous case of the nine counties in South Carolina. In Grant's action with respect to these counties the country saw only a swift and terrifying exercise of power; it is to be noticed, however, that he took the utmost care to avoid any act not strictly in accord with law and justice. Before taking action in the case, he sent the attorney-general to investigate conditions in South Carolina, and not until that officer had reported that the condi-

[1] *Ibid.*, p. 29. [2] *Ibid.*, p. 12.

tions in certain counties imperatively called for federal intervention did Grant proceed with the forcible suppression of Kuklux activities there. Two weeks after his order of October 17 suspending the writ of *habeas corpus* in Spartanburg, York, Marion, Chester, Laurens, Newberry, Fairfield, Lancaster, and Chesterfield counties, he extended the order as to Union County; but at the same time, having ascertained that lawlessness did not prevail in Marion County to the extent he at first believed, he revoked the order as to that county. In reporting to Congress his proceedings in South Carolina, he said, "Great caution has been exercised in making these arrests and . . . it is believed that no innocent person is now in custody." [1]

Aside from the South Carolina case, Grant left the execution of the Force Acts to the courts, ordering the judicial officers to be diligent in arresting and prosecuting offenders, and stationing troops at convenient points to aid the civil officers.[2] The result of the demonstration of force and determination in South Carolina, and of the vigorous arrest and prosecution of offenders elsewhere throughout the South, was that Kukluxism was practically extinct within a year.[3]

This, however, was a comparatively insignificant result. When the particular form of crime practised by Kuklux organizations came to an end in 1872, other forms took its place. The prevention of negroes from voting continued — effected by intimidation, threats, violence, and murder; elections were carried by gross fraud, and were contested by judicial intrigue, by force, and by civil war. Thus the federal courts, marshals, and soldiers were kept busy up to the end of Grant's second term in executing the Force Acts, the President doggedly persevering in the performance of the duty imposed on him by law. "Complaints are made," he said in his message to Congress on December 7, 1874, "of this interference by federal authority; but if said amendment [the Fifteenth] and act [the Force Act of 1870 with its amendments] do not provide for such interference under the circumstances

[1] McPherson, 1872, pp. 13, 14, 23, 31. [2] *Ibid.*, 1875, p. 53.
[3] Rhodes, "History of the United States," Vol. VI, p. 319.

as above stated, then they are without meaning, force, or effect, and the whole scheme of colored enfranchisement is worse than mockery and little better than a crime." It had been reported, he said, that the policy of the administration was to be changed — that the execution of the Force Acts was to be relaxed. "This," he said, " is a great mistake. While I remain executive, all the laws of Congress and the provisions of the constitution, including the recent amendments added thereto, will be enforced with rigor." [1] Grant even wished the presidential powers conferred by the Force Acts to be enlarged and extended by further legislation. In February, 1875, he used his influence to secure the passage of the "bill to protect electors," which authorized the President to exercise for an indefinite period the power to suspend the writ of *habeas corpus* in the South; the period during which the Force Act of 1871 vested these powers was about to expire. This bill did not pass.[2] But shortly before the election of 1876, the house of representatives having passed a resolution to the effect that the remaining provisions of the Force Acts should be executed with the utmost vigor, Grant directed the general of the army to hold all his available troops in readiness to be used upon the call of the civil authorities "for protecting all citizens, without distinction of race, color, or political opinion, in the exercise of the right to vote"; and to "have such force so distributed and stationed as to be able to render prompt assistance in the enforcement of the law." [3]

Meanwhile he did not cease to appeal to the Southern people to put a stop, by their own agencies, to the conditions that made the exercise of his power necessary. He sympathized with their various misfortunes caused by the war and its sequel. "In some instances," he said, "they have had most trying governments to live under, and very oppressive ones in the way of taxation." But after all, the Southern people were partly to blame, for they refused to stop the violation of law. They must "treat the negro

[1] McPherson, 1876, pp. 53–54.
[2] *Ibid.*, pp. 13–18. Rhodes, Vol. VII, p. 89.
[3] McPherson, 1876, p. 256.

as a citizen and a voter — as he is and must remain"; until they did so, the responsibility for the misfortunes incident to federal interference in their affairs was on themselves.[1]

From November, 1872, to September, 1875, Grant had to deal with another Southern problem, entirely distinct, legally, from that of the enforcement of the Fourteenth and Fifteenth amendments — namely, the problem of contested elections in the Southern states. That the President would uphold the Republican contestants as a matter of course was taken for granted among the Southern Republicans. In all the four cases that arose, however, the President showed a strong unwillingness to take any part in the political affairs of a state; in two of these cases he refused to interfere, except as an unofficial and disinterested adviser; in the two cases in which he did interfere, he did so only when such action was forced on him by his constitutional obligations, and his decision in favor of the Republican contestants in these two cases, though it was influenced by self-seeking partisan advisers, was more justifiable by law than a decision for the other party would have been.

The first case that arose was that of Louisiana, where in the autumn of 1872 a Democratic organization headed by McEnery

[1] McPherson, 1876, p. 54. Apparently inconsistent with this sentiment was Grant's action in regard to the murder of a number of negroes by a mob in Tennessee in August, 1874. The Tennessee authorities were exceedingly active in bringing the offenders to justice; they arrested and indicted forty-one members of the mob and made diligent search for the rest. Then the federal authorities took a hand. The United States marshal, assisted by United States soldiers, proceeded to make a number of arrests. Against these proceedings Governor John C. Brown made an indignant protest to the President; Tennessee, he said, was abundantly willing and able to take care of the case; he asked that the federal proceedings might be stopped. A protest against federal action on such grounds was a refreshing novelty to the President; he expressed to the governor his pleasure in finding a state government that would take such an attitude as that of Tennessee. But he was advised by Attorney-general Williams that according to law Tennessee and the federal government had concurrent jurisdiction in the premises, and that to turn over the arrested persons to the Tennessee authorities would establish a precedent that might retard the administration of justice in other parts of the South. He therefore declined Governor Brown's request. "The constitution makes it my duty to enforce the acts of Congress," he wrote, "and Congress has passed laws giving the United States jurisdiction in such cases." See McPherson, 1876, p. 44.

and a Republican organization headed by Kellogg both claimed to be the lawful state government. In the election and the counting of the votes there had been so many frauds and forgeries on both sides that to determine which organization had received a majority of the votes cast was utterly beyond possibility. The state courts, however, and the federal circuit court decided in favor of the Republican organization. Civil war was imminent; it was necessary for Grant to decide which organization should be recognized as the lawful government. He decided in favor of the one that appeared to have the better legal claim, the Republican, and stationed troops in New Orleans to be used in case of violent resistance to that organization. But further than this he refused to go, in spite of frantic appeals from the Republicans. He refused to interfere with the organization of the Democratic body claiming to be the legislature, or with the ceremonies for the inauguration of McEnery, so long as no violent opposition to the recognized government was attempted. Accordingly these men, in January, 1873, perfected their organization as the legislature and the executive of the state. Against this policy of non-interference Colonel Emory, commanding the federal troops in New Orleans, remonstrated to his superiors in Washington. "In my opinion," he wrote, "the use of the troops simply to keep the peace cannot lead to a satisfactory or permanent solution of the difficulties here." And this proved to be the case. The formal status that the McEnery organization was permitted to assume and maintain furnished a rallying point for the enemies of the recognized government, and led to more domestic violence than would probably otherwise have occurred. It became necessary for the President to order the McEnery forces to disperse on May 22, 1873. But that was not the end. In September of the following year the McEnery party, having preserved the form of legal status, was able to issue, under the form of a proclamation of the governor, a call to arms, which resulted in a brief and bloody revolution in the state government. Again the President found it necessary to order the dispersal of the McEnery forces. He reinstated the Kellogg government; and in protecting that

government the federal soldiers in Louisiana had their hands full until March, 1875. Probably the disorder in the state would not have been so extensive and prolonged if the McEnery party had been more vigorously dealt with in the beginning. Grant, however, did not believe that he was lawfully authorized to prevent acts of the McEnery organization that were in themselves peaceable. If those acts might lead to insurrection in the future, that was not his affair; his duty was simply to suppress insurrection when it occurred.[1]

About the time that the contest between Kellogg and McEnery began in Louisiana, a similar controversy arose in Alabama, where two bodies of men, one composed of Democrats and the other of Republicans, met in the capital, both claiming to be the legislature of the state. The Democratic body met in the state house, the Republican in the United States court house. Both bodies appealed to the President. On December 11, 1872, the President, through Attorney-general Williams, submitted unofficially a plan for compromising the contest, and advised that, until this plan could be considered, both bodies refrain from exercising "military or other force" and allow matters to remain *in statu quo*. The plan was accepted by both parties; but the Republican organization, even while it was coöperating with that of the Democrats in organizing the legislature according to the attorney-general's plan, continued to hold separate sessions at the federal court house. The Republican organization was recognized by the governor as the lawful legislature of the state, and in its sessions it claimed to have a constitutional quorum in both houses. It therefore continued its separate organization, so that, in case the Republicans failed to secure control of the legislature in the process recommended by the attorney-general, they might fall back on the status of that separate organization. In their sessions at the court house they passed, with the governor's approval, a number of legislative acts — one, for example, doubling the tax rate, and one authorizing a state loan of two million dollars; and they proposed to pass an act dissolving the body in session at the

[1] McPherson, 1874, pp. 100–109, 129, 141; 1876, pp. 21–38, 62.

capitol. This action was sharply rebuked by the administration at Washington; it produced, said the attorney-general, "an unfavorable impression as to the purposes of the Republican members of the assembly"; he would "consider it most unfortunate in all respects if the present organization at the state house was dissolved by the act of the Republicans." Then the Republicans represented to the administration that in the organizing of the state senate under the proposed plan of compromise the Republicans could obtain a majority if the lieutenant-governor, presiding, could decide which of two claimants was entitled to a given seat; but that, if the decision was left to the vote of the senate, the Democrats would obtain the majority. Would the administration sustain the lieutenant-governor in assuming and exercising the power to decide the contests? The administration replied that "according to all parliamentary law and usage the right of a claimant to a seat in a legislative body is to be decided by the vote of the body"; that the United States would not sustain the lieutenant-governor in the contemplated action. "The extraordinary proceedings in the United States court rooms" were viewed by the administration with "surprise and extreme regret." The further use of the court house by the Republican organization was forbidden; and that body was warned that "any attempt upon any pretext whatever to disturb the present organization of the general assembly of Alabama" would "meet with no countenance or favor" from Washington. The Republicans thereupon devoted themselves singly to carrying out the administration's plan of compromise, and in so doing finally managed to secure a majority in both houses of the legislature.[1]

By the state election of December, 1873, in Texas a Democratic governor and legislature were elected by large majorities. The then existing Republican government, headed by Governor Davis, attempted to prolong its tenure through a decision of the state supreme court holding the election illegal and void. This decision was obtained in the following ingenious manner: A man named Rodriguez was arrested in Houston on the charge of fraudulent

[1] *Ibid.*, 1874, pp. 85–86. "Annual Cyclopedia," 1872, 1873.

voting. A writ of *habeas corpus* was issued, returnable to the state supreme court in Austin, a hundred and seventy-five miles from the place where the violation of the law was alleged to have been committed. After various irregular proceedings the court discharged Rodriguez on the ground that the election law under which he had voted was void. This decision in the case of the one man Rodriguez could of course have no effect on the title to office of any man elected under the law that was declared void, except as individual cases involving such right might be brought into court and as the opinion in the case of Rodriguez might be treated as a valid precedent. Moreover, the election law declared void had been passed on the recommendation of Governor Davis; Davis had, under the law, issued his proclamation ordering the election. The Republicans had made nominations, conducted their campaign, and voted under the law; and not until after their defeat was the case of Rodriguez trumped up. Under these circumstances, in January, 1874, on the eve of the installation of Governor Coke, Davis refused to surrender his office, surrounded himself with armed men, and called on the President to sustain him by "a display of United States troops." Grant replied that the request had not been made in legal form and therefore could not be granted; he added, after reviewing the circumstance that made Davis's course objectionable, "Would it not be prudent, as well as right, to yield to the verdict of the people as expressed by their ballots?" Coke was inaugurated governor on January 15. On the next day Davis called on the President for military aid in defending what he called the lawful government against insurrection. Again the request was refused; and on receipt of the telegram bearing the refusal, the Davis party quietly gave way to the newly elected government.[1]

In April, 1874, a civil war broke out in Arkansas between the partisans of Baxter, a regular Republican, and Brooks, a "reform" Republican allied with the Democrats of the state. Each of these two men claimed to have been elected governor. Baxter had been declared governor by the legislature, and had been

[1] McPherson, 1874, pp. 109–112; 1876, p. 46.

installed as such. Brooks secured from a state court a judgment of ouster against Baxter, and thereupon took possession of the state buildings by force. Both men now appealed to the President on the same day, April 15, 1874, each asking for support against the other, but neither making a formal requisition as a state governor for aid in suppressing insurrection. Grant refused to support or assist either party; the controversy was not a federal matter, and the exercise of the federal power to put down domestic violence within a state had not been called for "in legal form." He instructed Captain Rose, commanding a body of federal troops stationed in the capital of Arkansas, to prevent bloodshed, but to take no part in the controversy. Rose accordingly, posting his men between the two opposing forces, prevented them from joining battle; but they remained under arms, their numbers were constantly increased, and Little Rock was filled with disorder and violence. The mayor of the city telegraphed to Washington urging federal assistance in policing the city; the reply was of course that the President had no authority to comply with this request. Then Brooks called upon the President for protection of the state government against insurrection, according to the constitution. Baxter did the same. Thus it became Grant's duty to recognize the one or the other as the governor of Arkansas. He referred the question to Attorney-general Williams, who reported that in his opinion Baxter was the lawful governor, because, whether or not he had received a majority of the votes, the legislature had declared him elected, and the decision of the legislature was legally final. Acting upon this advice, Grant recognized Baxter as governor, and on May 15, 1874, commanded the Brooks forces "to disperse and retire peaceably to their respective abodes, and hereafter to submit themselves to the lawful authority of said executive and the other constituted authorities of said state." His proclamation, like the two addressed to the enemies of the Kellogg government in Louisiana, closed with the words, "And I invoke the aid and coöperation of all good citizens to uphold law and preserve public peace."

Immediately after this the state legislature ordered a constitu-

tional convention to be held in the coming July. The convention met and framed a new constitution, which provided that the tenure of the governor and lieutenant-governor then in office, whose term under the then existing constitution would expire in January, 1877, should expire in November, 1874, and that a new state government should be elected on October 13, 1874; it also made radical reductions in the governor's powers, and abolished the suffrage laws under which a large class of white men had been before debarred from voting. Baxter regarded these proceedings with hearty approval; for, though he had taken office as a Republican, he had since allied himself with the Democrats, whereas Brooks, who had been supported in the disputed election by Democrats and "reform" Republicans, had since allied himself with the negro party. Therefore Baxter supported the new constitution, while Brooks, with the Republican party of the state, declared that the constitutional convention had not been called according to the provisions of the constitution then in force, which required the vote of two successive legislatures to order such a convention; that it was an unlawful conspiracy of Kuklux men and rebels; and that the constitution which it framed was null and void. Among those who held these views was V. V. Smith, the lieutenant-governor holding office with Baxter. The Democratic state convention, having offered the nomination for governor to Baxter, who declined it, then nominated A. H. Garland. The Republican convention, refusing to recognize the coming election as lawful, made no nominations. The election of October 13 was a sweeping Democratic victory; the new constitution was ratified, and Garland was elected. Garland assumed office on November 12, Baxter of course cheerfully making way for him. On the same day Smith, declaring that he was the lawful governor of the state since Baxter had "abdicated and abandoned" the office, called on the President to uphold him as such. Grant refused, not denying the validity of Smith's claim, but saying that a committee of Congress was then making an investigation of affairs in Arkansas, pending which he was not willing to take any action. Later Grant came to the conclusion that the abrogation of the former

state constitution was illegal and revolutionary. But, strange to say, this conclusion did not carry with it, in the President's mind, the conclusion that Smith was the lawful governor; instead, it carried the conclusion that Brooks was the lawful governor, for Grant now expressed the belief that — contrary to his proclamation of May 15 — Brooks had been lawfully elected in 1872 and had been unlawfully deprived of his office. He thought that the federal government should not allow the *de facto* government in Arkansas to stand; to do so would be to establish a dangerous precedent. He himself was not willing to act on this belief; but he urged Congress to declare that Brooks was the lawful governor of the state, and that the former constitution was still in force. An attempt to pass a resolution to this effect failed in the House of Representatives on March 2, 1875; and the perplexing case was finally settled by the passage, on the same day, of a resolution declaring that no federal interference with the existing government in Arkansas was advisable. Grant's recommendation of such interference was at variance with his general practice regarding state governments; but it was entirely consistent with his deeply rooted opposition to whatever he believed to be contrary to law.[1]

A call upon the President from a state government for military aid against persons seeking by force to overthrow that government is a different thing from a call for aid in suppressing among citizens violence not aimed directly against the government. A number of appeals of the latter kind came to Grant from July, 1874, to the end of his presidency. One such appeal had, as we have said, come to him from South Carolina in March, 1871. In that case Grant gave the aid requested, though his authority to do so was, as he himself said, "not clear."[2] In all subsequent cases he acted under a strict definition of his power. This definition he got from Attorney-general Pierrepont, who was Grant's legal adviser when those cases arose, and whose construction of the law

[1] McPherson, 1874, pp. 87–100, 132; 1876, p. 191. "Annual Cyclopedia," 1874. Lalor, Vol. I, p. 128.

[2] McPherson, 1872, p. 29.

was stricter than that of his predecessor, Williams, had been. Pierrepont's views were as follows: The constitution authorizes "the United States" to protect the states against "domestic violence"; but the act of Congress that gives the President general powers in this matter (Revised Statutes, section 5297) authorizes him to proceed only "in case of an insurrection in any state against the government thereof." The power to aid a state government in suppressing, among its citizens, armed conflict not involving resistance to that government, though it may belong to the United States, does not belong to the President. Moreover, the act of Congress referred to makes it "lawful" for the President to act in case of insurrection; but such action is not obligatory or justifiable unless the state government applying for protection has exhausted its own powers in combating the insurrection. Grant's support of the Kellogg government in Louisiana and of the Baxter government in Arkansas was consistent with these views, assuming that these were the lawful state governments; for the "domestic violence" which he suppressed in these cases was insurrection, with which the state governments were powerless to cope. Four calls for military aid, however, came from South Carolina and Mississippi in cases not arising out of contested elections — cases in which it was not so clear that the circumstances on which Pierrepont thought presidential aid must be conditioned were present.

First, Governor Ames of Mississippi telegraphed the President on July 29, 1874, that at Vicksburg two bodies of men, the one Republican and the other Democratic, organized and armed, with cavalry, infantry, and artillery, were on the verge of conflict and bloodshed; would not the President send some troops to Vicksburg? "Their presence," wrote Ames, "may do great good; it may save many lives." The President, came the reply, "declines to move the troops except under a call made strictly in accordance with the terms of the Constitution."[1]

On September 25, 1874, came a call for aid from Governor Moses of South Carolina. Armed bands of men, the governor telegraphed, were assembled in Edgefield County, creating "a reign

[1] McPherson, 1876, p. 40.

of terror," and defying the governor's proclamation commanding them to disperse. The governor was powerless to enforce his orders "except by the use of the inexperienced state militia," which he was reluctant to employ. "Having exhausted all the means at my command," the message ran, "I call upon you under the constitution for such assistance as will enable me to restore the peace and quiet of the county." He asked that the local commander of the United States troops be ordered to put his forces at the disposal of the governor. Grant refused this request. "A company of United States troops is now stationed there [in Edgefield County]," the message said, "and it is expected and believed that it will afford adequate protection to the lives and property of citizens." [1]

In December of the same year a more urgent call came from Mississippi, this one from the legislature, which had been called in special session to meet the emergency. In Vicksburg and in Warren County, it was alleged, not only had many citizens been persecuted and killed and many other violent and illegal acts been committed against citizens by disorderly and turbulent persons, but state officers were by force and violence prevented from performing their duties, courts could not be held, and public buildings and records had been seized. Upon these representations of outright insurrection the President sent troops to disperse "said disorderly and turbulent persons." [2]

A similar case occurred in Mississippi in September, 1875. By this time the opposition to federal interference in the affairs of the Southern states had become desperate in the South, and severe disapproval of it had become widespread in the North. Governor Ames's application recited that "domestic violence" prevailed in various parts of the state "beyond the power of the state authorities to suppress"; and that under the constitution it was the duty of "the United States" to protect the states from "domestic violence." "I therefore . . . make this my application," he wrote, "for such aid from the federal government as may be necessary to restore peace to the state." About the same time with this

[1] *Ibid.*, p. 44. [2] *Ibid.*, p. 65.

application from the governor the President received a flood of messages from various leading men in Mississippi stating that the governor's representations were false; that peace and quiet prevailed throughout the state; that if any disturbance of the peace should arise, "a civil *posse* composed of good citizens of all political parties and of sufficient force to protect life and property" could be had in any county in the state; but that the state authorities refrained from all efforts to keep the peace by civil means, hoping for federal intervention, whereby they would gain an advantage in the approaching state election. Attorney-general Pierrepont then telegraphed Ames that federal troops had been put in readiness to aid him if it was necessary. But *was* it necessary? Was there "insurrection *against the state government*"? and if so, could it not be put down by the "state military forces aided by all the other powers of the state government and true citizens"? Ames replied that federal aid *was* urgently necessary, but he evaded the specific questions asked. He remarked, "Permit me to express the hope that the odium of such interference shall not attach to President Grant or the Republican party. . . . Let the odium in all its magnitude descend upon me." The reply came that on these representations the President was not willing to use the federal troops in restoring order. "You make no suggestion even," said the attorney-general, "that there is any insurrection against the government of the state." Also the President believed that Ames had not exhausted his powers as governor in suppressing the disorders, and urged him to do so before federal soldiers should be called in. The United States troops in Mississippi were under orders "to assist the governor in maintaining order and preserving life in case of insurrection too formidable for him to suppress." But let the governor not call on the troops for such assistance (an act which would necessitate the issuance of a presidential proclamation commanding the insurgents to disperse) unless that case actually arose. "The whole public are tired out," wrote Grant, "with these annual autumnal outbreaks in the South, and the great majority are ready now to condemn any interference on the part of the government. I heartily wish that peace and good order

may be restored without issuing the proclamation. But if it is not, the proclamation must be issued; and if it is, I shall instruct the commander of the forces to have no child's play." Thus Grant left the question whether there should be federal interference in this case to the decision of Governor Ames, relying on his good faith in observing the President's wishes. Ames proceeded to organize companies of militia, and the federal troops were not called in.[1]

Odious as military assistance to state governments had now become, both to the President and (as he believed) to the majority of the public, yet his determination continued fixed to give such assistance when circumstances warranted it. In July, 1876, in reply to a letter from Governor Chamberlain of South Carolina giving an account of the massacre in the town of Hamburg and speaking of the probability of the state authorities' meeting armed resistance in their effort to bring the murderers to justice, Grant wrote, "The views which you express as to . . . the duty of the executive of the nation to give all needful aid, when properly called on to do so, . . . I fully concur in. . . . Go on, and let every governor where the same dangers threaten the peace of his state, go on in the conscientious discharge of his duties . . . and I will give every aid for which I can find law or constitutional power. . . . Expressing the hope that the better judgment and coöperation of the citizens of the state . . . may enable you to secure a fair trial . . . without aid from the federal government, but with the promise of such aid on the conditions named in the foregoing, I subscribe myself very respectfully your obedient servant." [2]

As time went on and lawlessness continued in the South, Grant's feeling that the Southern people, through their resistance to law and their refusal to stop political crime among themselves, were to blame for the evils they complained of became stronger, reënforced by growing indignation at the atrocities frequently committed in the South and allowed to pass unpunished. Ad-

[1] McPherson, 1876, pp. 40–44. "Annual Cyclopedia," 1874.
[2] McPherson, 1876, p. 207.

dressing the senate on January 13, 1875, regarding the condition of Louisiana, he said: "On the 13th of April (1873) . . . a butchery of citizens was committed at Colfax, which in bloodthirstiness and barbarity is hardly surpassed by any acts of savage warfare . . . Insuperable obstructions were thrown in the way of punishing these murderers, and the so-called conservative papers of the state not only justified the massacre but denounced as federal tyranny and despotism the attempt of the United States officers to bring them to justice. Fierce denunciations ring through the country about [federal interference] in Louisiana, while every one of the Colfax miscreants goes unwhipped of justice, and no way can be found to punish the perpetrators of this bloody and monstrous crime. Not unlike this was the massacre in August last. Several Northern young men of capital and enterprise had started the little and flourishing town of Coushatta. Some of them were Republicans and office-holders under Kellogg. They were therefore doomed to death. Six of them were seized and carried away from their homes and murdered in cold blood. No one has been punished; and the conservative press of the state denounced all efforts to that end, and boldly justified the crime."[1] Addressing the senate again on August 1, 1876, on "the late disgraceful and brutal slaughter of unoffending men at the town of Hamburg, South Carolina," he said, "Murders and massacres of innocent men for opinion's sake, or on account of color, have been of too recent date and of too frequent occurrence to require recapitulation or testimony here. All are familiar with their horrible details, the only wonder being that so many justify them or apologize for them."[2] "The scene at Hamburg," he wrote to the governor of South Carolina, "as cruel, bloodthirsty, wanton, unprovoked, and as uncalled for as it was, is only a repetition of the course that has been pursued in other states within the last few years, notably in Mississippi and Louisiana."[3] Grant believed that the Democrats of Mississippi carried the state election of 1875 by preventing Republicans, through threats, intimidation, violence, armed force, riot, and murder, from assembling,

[1] McPherson, 1876, p. 33. [2] *Ibid.*, p. 207. [3] *Ibid.*

from running for office, and from voting; by resorting to fraud in counting votes where force failed to obtain a majority; and by the forcible prevention of the civil authorities, including both the state and the federal courts, from interfering with the commission of these outrages. After the election he wrote the much discussed statement, "Mississippi is governed to-day by officials chosen through fraud and violence such as would scarcely be accredited to savages." [1] "How long these things are to continue," he said, "or what is to be the final remedy, the great Ruler of the Universe only knows. But I have an abiding faith that the remedy will come, and come speedily, and I earnestly hope that it will come peacefully." [2]

Shocked at the atrocities committed upon human life in the South, indignant at the persistent disobedience to established law, Grant probably did not appreciate how intolerable was the burden which Republican policy was trying to fasten upon the Southern states. "There has never been a desire on the part of the North," he wrote in the letter above quoted, "to humiliate the South; nothing is claimed for one state that is not freely accorded to all others, unless it may be the right to kill negroes and Republicans." [3] The Fourteenth and Fifteenth amendments applied to the whole Union, and must be enforced equally throughout the Union; if such enforcement brought unpleasant results in the South, that was unfortunate but absolutely beside the point; regardless of consequences, established law must be obeyed. Grant could see no other way.

The leaders of the Republican party, however, more practical, more flexible than the President, lacking his spirit of simple obedience to law, did see another way. They saw that it was impossible to continue in Grant's way; they saw that it was time to recede, and this manœuver had already begun in the summer of 1876. In June the Republican convention called for the pacification of the South and the protection of the rights of all citizens, but in terms somewhat less trenchant than those employed in preceding platforms; it wove into these declarations the statement that it

[1] *Ibid.* [2] *Ibid.* [3] *Ibid.*

favored "removing any just causes of discontent on the part of any class."[1] Hayes touched in general terms, in his letter of acceptance, on the sacredness of the constitution — the new parts as well as the old — and of the duty of "recognition of the rights of all by all"; but he laid more stress on expressions of conciliation and reassurance to the South. "What the South most needs is peace," he said, and continued: "Let me assure my countrymen of the Southern states that if I shall be charged with the duty of organizing an administration, it will be one which will regard and cherish their truest interests . . . and which will put forth its best efforts in behalf of a civil policy which will wipe out forever the distinction between North and South."[2] Wheeler, the candidate for the Vice Presidency, dwelt, in his letter of acceptance, on the fallaciousness of supposing that "in the brief space of ten or fifteen years" conditions in the South could be transformed into those prevailing in "our model Northern communities"; time, patience, gradual adjustment, education, he said, must do the work. There would be in the process "a good deal of unavoidable friction," which would necessitate relief by the federal government; but that relief should take the form of "temperate, fostering care," and "how to diminish the friction" was a problem that addressed itself to "our best and wisest statesmanship."[1] Thus was the new Republican policy foreshadowed in June and July of 1876, by phraseology that did not declare exactly what would be done, but only suggested that somehow the treatment of the South was to be less severe. The withdrawal of the federal troops from the South; the abandonment of the vigorous execution of the Force Acts; in other words, quiet acquiescence in the nullification, to a reasonable degree, of the Fourteenth and Fifteenth amendments, — these were the concrete forms in which the new policy was to be embodied — after the election.

This was the "final remedy" which Grant said was known only to "the great Ruler of the Universe." Satisfactorily as that remedy worked, it was totally repugnant to the mind of Grant; and it was not applied until after he ceased to be President. The

[1] McPherson, 1876, pp. 210–214. [2] *Ibid.* [3] *Ibid.*

election of 1876, in which the Republican party stood on the new platform of non-interference in the South, was conducted in the South under the auspices of federal troops — "all the available force not now engaged in subduing the savages on the Western frontier" — "so distributed and stationed as to be able to render prompt assistance in the enforcement of the law," by order of President Grant.

IX

THE FEDERAL ENFORCEMENT ACTS

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IX

THE FEDERAL ENFORCEMENT ACTS

THE first Federal enforcement act of the Reconstruction period became law on May 31, 1870, after a protracted and bitter debate in the Congress of the United States. The enactment of the law and its enforcement meant the desertion, for the time being, by the National government of certain principles in political procedure which make working democracy as we know it in America a practical possibility. Luckily for the country at large the strict application of the law was limited to one section. An irresponsible bureaucracy directing hired soldiers, and law courts engaged in controlling political opinion are institutions incompatible with democracy. The enforcement policy would have combined all three. The subsequent rather revolutionary experience, beginning in 1870, puts the United States historically among those nations which during the nineteenth century have resorted in time of peace to summary political methods backed by arms to bolster up a régime imposed from without upon a portion of its people. There is considerable similarity between the arbitrary orders and mailed fist in the South during the seventies and the past oppression of Ireland by England, of Bohemia and Italy by Austria, of Finland and Poland by Russia, of Alsace and Lorraine by Germany. All such oppression springs from a supposed national necessity. Here in the United States this tendency toward arbitrary government in time of peace began soon after the Civil War and broke down in a comparatively short time. The limited object of this essay is to analyze the laws upon which the Federal enforcement policy finally turned, to see how they worked out, and why they failed.

In the struggle over the passage of the force bill the opposition of the Democrats was directed toward moderating the proposed

law — toward making it less vigorous and sweeping. To defeat it was out of the question. The Republicans had the votes, and for them the law was a party necessity. The Kuklux Klan and similar organizations threatened to end Republican control in the South. This would change a radical majority of 100 in the national house to a minority of about 25. The methods of the Klan were notoriously violent and bloody. This fact proved a fortunate circumstance for Republicans because civilization itself, and not political necessity, seemed to call for federal interposition. In the name of humanity, therefore, and not for the sake of politics the force acts were passed.

The following was, in brief, the radical argument in justification of the legislation. Violent disregard for law and human rights existed in the South. "Personal rights are destroyed," said Senator Hamilton of Texas. The Southern state governments were declared to be unable to protect life and property. The constitution of the United States guarantees certain rights to the individual. The Fourteenth and Fifteenth amendments vest in the Federal government the duty of protecting the individual whose constitutional rights are impaired. The Federal government to render such protection must reach directly the individual offender. No legislation can effectively prevent a commonwealth from passing a law or force it to execute one already enacted. Congress has a perfect right, argued the advocates of the force act, to invade any state for the purpose of what one member of Congress termed "securing and protecting liberty."[1] Now the right of negro citizens of the South to vote was declared to be the "greatest guarantee thus far provided for the preservation of order in those states, not to say the preservation of the authority of the government itself." This view was reiterated in the course of the discussion.

From the foregoing summary it will be seen that the gist of the Republican argument was the constitutional right of Congress to legislate for the protection of the citizen who is oppressed because of "race, color or previous condition." The denial of the

[1] Cong. Globe, 41st Cong., 2d Ses., p. 3611.

right to vote freely was considered oppression. The power to protect this right belonged to Congress. Lawless conditions in the South called for the exercise of this power.[1]

"Upon that ground the Republican party must stand," declared Senator Pool, a North Carolina radical, "in carrying into effect the Reconstruction policy, or the whole fabric of Reconstruction, with all the principles connected with it, amounts to nothing at all; and in the end it will topple and fall unless it can be enforced by appropriate legislation" [2] — a striking admission that the existing régime in the South depended upon the physical power of the Federal government for its maintenance.

The Democrats in this debate did not make any serious attempt to disprove the Republican claim of violent lawlessness in the South. They discounted the extent of such lawlessness, and affirmed that it was well within the control of the local government. They denied that the Federal constitution gave Congress any power to enact such a measure "to enforce the Fifteenth Amendment." They turned to the crucial language of the Amendment: "The rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of color, race, or previous condition of servitude." This was construed as a prohibition not upon the individual or upon a combination of individuals constituting a mob, but a prohibition upon the United States and upon the states — "and no stretch of ingenuity can extend it one hair's breadth further," declared Senator Thurman of Ohio. "Why the prohibition upon the United States?" he continued. "Because the Congress of the United States fixes qualifications of voters in the District of Columbia and also in territories of the United States, and therefore the prohibition upon the United States is proper. Why the prohibition upon the states? Because the states, each for itself fixes the qualifications of the voters in the states."

The Fifteenth Amendment was interpreted by the Democrats as a limitation upon the power of the states — not upon the indi-

[1] See estimate by Dunning, "Essays," p. 357.
[2] Cong. Globe, 41st Cong., 2d Ses., p. 3613.

vidual in the state, except indirectly through the limitation upon the state of which he was a citizen. Any state constitution or law discriminating against a citizen on account of race, color, or previous condition becomes null and void because repugnant to the Fourteenth and Fifteenth Amendments; and for a remedy at law against any such violations whatsoever, the courts afford precisely the same redress that they afford against the violation of any other portion of the Federal constitution. It was pointed out that if there were any necessity for passing a bill to enforce the Fifteenth Amendment, the same line of reasoning would require bills of pains and penalties and prosecutions to enforce every other prohibition of the Federal constitution. "The power of fixing the qualifications of electors, or restricting that power in a single particular," said Senator Thurman, "is as plain, it seems to me, as the sun at noon-day in a cloudless sky; this amendment can only be held to speak of a state as a state; as a state in her political capacity, as a distinct autonomy, and does not deal with the individual at all." [1] The reply put forth by most Republicans to such reasoning was based upon the simple closing provision of the Fifteenth Amendment itself: "Congress shall have power to enforce this article by appropriate legislation."

The first bill in much of its final form was passed by the senate after a strenuous all-night session on May 21. The morning sun was shining when Mr. Thurman arose before a disheveled body of law-makers for a final useless fling at the bill. "I see senators who have gone to their homes and had a comfortable rest," he said, "while others of us have sat up through the weary hours of the night. I see other senators who have quietly slept on the sofas while amendment after amendment has been made to this bill, and only aroused from their slumbers when there was a division of the senate or when their presence was necessary to make a quorum. I do not believe that there is a senator here who will stand up and on his honor declare that he knows what this bill is. And yet we are here asked to vote on this question; we are asked to pass this bill, such a bill as never was passed or

[1] Cong. Globe, 41st Cong., 2d. Ses. p. 3661.

thought of being passed since the government had its existence."[1] It passed easily, however,[2] and ten days later after sundry conferences between the two houses, resulting in the addition of three more drastic sections, it became law, May 31, 1870.

This first enforcement act is a rather elaborate statute of twenty-three sections, portions of which were fashioned after the Federal enforcement law of 1833 and the fugitive slave law of 1850. Most definitions of the act came from those who opposed its passage, and are therefore *ex parte*. One member spoke of it as "a conglomerated mass of incongruities and uncertainties." Another defined it as "a criminal code by Congress upon the subject of elections."[3] The formal title of the act is fairly indicative of its object. It was designed to enforce in thorough fashion the Fifteenth Amendment.

The law provides both minutely and broadly for the protection by the Federal government of all citizens in the enjoyment of both civil and political rights so far as they are guaranteed directly or indirectly by the constitution of the United States. In scope, at least, it is a remarkable statute. It defines as misdemeanors some 26 offenses; as felonies some 5 offenses; and as crimes merely, some 87 offenses. The maximum punishment attached to a misdemeanor was a fine of $500 and one year's imprisonment; to a "crime" a fine of $1000 and one year's imprisonment; to a felony a fine of $5000 and ten years' imprisonment.

The intention of those who originated the statute was to protect the negro in the exercise of the electoral franchise. This protection was to be extended through Federal officials — judges, district attorneys, marshals, deputy marshals, and special commissioners. Experience clearly demonstrated that the Southern white man was keeping the negro from voting by certain methods difficult to prevent through local officials and state courts. Grand, petit, and coroners' juries in many localities feared to return verdicts adverse to Southern whites. Witnesses who had damaging

[1] *Ibid.*, p. 3688.
[2] *Ibid.*, p. 3690 — at 7 A.M., May 21 — vote 43 to 8.
[3] *Ibid.*, p. 3656. (Williams of Oregon.)

evidence feared to give it when called on. Southern whites subpœnaed as witnesses often defied or outwitted the local authorities, and thus escaped giving evidence — thereby hindering the operations of the state enforcement laws.

The methods employed by Southern whites in their efforts to overcome negro majorities were various. They obstructed in some technical way negro registration, or the lawful preparation therefore. They hindered registration and voting through bribery of negro leaders and even of individual voters. They intimidated voters through threats of physical violence. They moved about in groups at night near election time, terrorizing localities and occasionally killing radicals — "Ku Kluxing." They quietly appeared in companies near the polls on election day, armed and mounted and so placed as to identify the negroes who came to vote. They refused to employ or to rent to or make contracts with those negroes who voted the Republican ticket, or who voted at all.[1]

The Federal enforcement act of 1870 sought to break up every one of these practices. In the first place, all prosecutions and civil suits involved in applying the law were to be carried on in the United States courts. In the second place, the statute brought local and state registration and election officials within the sphere of Federal law in the performance of their duties, and prescribed heavy penalties for discriminating against the negro. In the third place, the law made it a felony for persons to conspire together or go in disguise upon the public highway or the premises of another with intent to injure or intimidate. In the fourth place, it enlarged the powers of Federal marshals and commissioners by giving them "authority to summon and call to their aid bystanders or the *posse comitatus* of the proper county, or such portion of the land or naval force of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged, and to insure a faithful observance of the Fifteenth Amendment." Finally, the law brought under the jurisdiction

[1] See the mass of organized testimony in "Kuklux Rpt." — Ho. R. Repts., 42d Cong., 2d Ses., No. 22; also Ho. Ex. Docs., 42d Cong., 2d Ses., No. 46.

of the Federal courts those persons who by bribery or threat should seek to influence the negro voter, or who should deprive any negro citizen of his political rights "by threats of depriving such person of employment or occupation or ejecting him, or of refusing to renew leases or contracts for labor" — a provision praised by Senator Morton of Indiana as striking "at perhaps the greatest danger to which the colored people of the South are exposed"; [1] which was partly true, but as one critic put it at the time, this Federal law would "render it almost impossible for landlords to collect rent of a tenant about election times without running the risk of criminal prosecution."

Such, in outline, were the general provisions of the first force act — provisions designed to protect the negro voter. But the law went beyond this. It definitely provided that civil damages to the oppressed might be recovered through civil suit in the Federal courts. Furthermore, it provided for the obtaining of political office by civil suit through *quo warranto* proceedings in the same tribunals.

The law really placed a premium on perjury and put the appointments to local offices within the power of Federal judges and district attorneys. But this was no more arbitrary than the provision that a simple "affidavit" from any citizen at election times that he had been prevented from registering through some "wrongful act or omission" of registration officials would entitle him to vote. "It, in effect, repeals to a great extent the registration acts of many of the states," said one critic; "it opens the door to a torrent of litigation." [2]

Experience was soon to demonstrate that the most effective provisions of the law in securing the ends desired were: 1, the extension of Federal jurisdiction over practically all elections and practically all political rights of the negro. 2, the empowering of minor Federal officials in the South to use the army in making arrests, in policing the polling places and gathering up by force, when necessary, witnesses for the prosecution — "subpœnaing witnesses by process of martial law," as it was aptly put by one

[1] Cong. Globe, 41st Cong., 2d Ses., p. 3678. [2] *Ibid.*, p. 3656.

Republican senator who supported the measure.[1] These two provisions made the law obnoxious to many Southerners, but dangerous to transgress. To defy a weak state government was one thing; to defy the powerful and then vindicative Federal government was quite another. The keystone, probably, to this new arch of protection — the force act of 1870 — was the provision for the use of Federal soldiers. The clause which furnished the basis for most indictments and most convictions was the 6th, which defined the punishment of "two or more persons who shall band or conspire together" to injure or oppress any citizen of the United States "with intent" to hinder the "free exercise and enjoyment of any right or privilege granted or secured to him by the constitution of the United States."

When the first Federal force bill became law, the Republican state governments in the South were in the midst of a struggle for existence. They were trying to maintain themselves by drastic measures. Negro militia was being organized, armed, and drilled in every Southern state south of Virginia and Tennessee. The whites generally refused to serve in the militia or were discouraged from doing so by the state governments. Ninety-six thousand negroes were nominally enrolled in South Carolina's militia. Fourteen black regiments were organized there, and were armed with modern rifles and supplied with ammunition.[2] In Louisiana and Texas "metropolitan police" and "state police" forces were created in addition to the militia.[3] They were under the absolute control of the governors of those states, and were well armed. In North Carolina heavily armed companies of black and white state militia terrorized the country.[4] In Louisiana the metropolitan police included an artillery division with Gatling and Napoleon guns and another division of cavalry. By the summer of 1870 the governors of Tennessee, North Carolina, and Texas had seen

[1] Cong. Globe, 41st Cong., 2d Ses., p. 3679.

[2] Reynolds, "Reconstruction in South Carolina," Chaps. 3–5; Herbert, "Why the Solid South?" pp. 92–94; Kuklux Rept., S. C.

[3] Ramsdell, "Reconstruction in Texas," pp. 295–297, 301.

[4] Hamilton, "Reconstruction in North Carolina," pp. 482–533.

fit to suspend the writ of *habeas corpus* in parts of their respective commonwealths.[1]

The Federal war department reported that during 1870, the national troops in the South were "engaged in the specific duties of aiding the civil authorities in preserving the peace at the elections." This work was done by some five regiments of infantry, three of artillery, and one of cavalry. The presence of United States troops ready to apply the force act of May 31 was an important factor in the autumn elections of 1870. The Federal soldiers were election police.[2]

Such police functions did not begin with the force act. Three months before its passage, in fact, definite instructions were issued to post commanders in the South regarding Federal military coöperation with the local civil authorities to aid in the due execution of the law. The use of "the military force of the United States to suppress insurrection against the government of any state" was declared to be authorized by section four of the Federal constitution, which stipulates that the national government "shall guarantee to every state in this Union a republican form of government" and shall protect each of them against "domestic violence" on the application "of the legislature or of the executive (when the legislative cannot be convened)." A statute to carry out this constitutional provision had been passed by Congress on February 28, 1795, which provided that "in case of an insurrection in any state against the government thereof it shall be lawful for the President of the United States, on application of the legislature of such state, to call out the militia of any state to suppress such insurrection." Here was the statutory basis for military interference before the force bills were enacted. One is constrained to believe, therefore, that the act of May 31, 1870, was unnecessary, if military policing by the central government had been the only object desired.

During 1870 North Carolina was the scene of the most notorious lawlessness and probably the widest application of the Federal

[1] "Why the Solid South?" pp. 55, 92, 211, 371.
[2] H. R. Repts., 42d Cong., 2d Ses., No. 22, pt. 5, p. 1613.

force act. Governor Holden of that state was the advocate of bloody measures. On March 10, 1870, he wrote President Grant: "If Congress will authorize the suspension by the President of the writ of *habeas corpus* in certain localities, and if criminals could be arrested and tried before military tribunals and shot, we would soon have peace and order throughout all this country. The remedy would be sharp and bloody, but it is as indispensable as was the suppression of the Rebellion."[1] Holden at once prepared to put in practice his own advice by suspending the writ of *habeas corpus* in two counties of North Carolina[2] and by sending into them two bodies of state militia, under the command of one Colonel Kirk. These agents of the radical governor seized more than 50 white men and held them for trial by military commission and possible execution.

By the middle of the summer of 1870 calls were coming from all over the South for military aid to Federal marshals in arresting violators of the Federal enforcement act. In North Carolina, particularly, the trouble became acute. The post-commander at Raleigh reported on July 6th that "the marshal thinks it impracticable to summon an adequate civil posse and expresses belief that to do so would result in conflict and loss of life."[3] The civil *posse comitatus* provision proved, in fact, to be largely unworkable in the South. The United States marshals came to rely almost entirely on Federal troops for *posses*. These military details consisted usually of from ten to twenty men, under a sergeant. "It was difficult if not impossible to get a *posse* large enough" by summoning bystanders, said one marshal. When the attempt to arrest was made with an inadequate civil *posse*, it resulted as a rule in successful resistance; and when the military was later called upon, the offenders, warned by the frustrated attempt, had removed themselves beyond detection.

The orders from department headquarters issued to the army

[1] Sen. Ex. Docs., 41st Cong., 3d Ses., No. 16, pt. 2, p. 41.

[2] *Ibid.*, p. 19; Sen. Repts. 42d Cong., 1st Ses., No.1, pt. 1, p. 426 (index).

[3] See, for instance, Maj. Merrill's Rept. in Ho. Ex. Docs., 42d Cong., 3d Ses., 1 (1872).

in the South sought to check the indiscriminate use of troops by Federal civil officials. On August 10, 1870, for instance, the commander in North Carolina was instructed to "confine the use of the troops to preserving the peace; that is, preventing riot and bloodshed." On November 25, he was explicitly informed that "it is your duty to aid the civil authorities, not to supplant them or do their duty in any respect. The arrests must be made by civil process and by civil officers." [1]

During the first year of the national enforcement policy the courts did little, but the troops were busy. The distribution of Federal troops in the South in 1870–1871 was approximately as follows: in Virginia, 300; in North Carolina, 200; in South Carolina, 1000; in Georgia, 500; in Florida, 450; in Alabama, 200; in Mississippi, 200; in Tennessee, 300; in Kentucky, 1200; in Arkansas, 100; in Louisiana, 600; in Texas, 3900. From this it will be seen that the aggregate number of soldiers in the South was approximately 9000 — about a third of the army.[2] Numerous expeditions by detachments of soldiers are reported as taking place "to aid marshals in serving process." From North Carolina, for instance, twenty-four such expeditions were reported for this year (1870–1871), some of them lasting for as much as one week, during which time large sections of the country were traversed and many arrests made or warnings given by the accompanying marshal.

The commander of the department of the South reported for 1870 some 20 important garrison changes, closing with this significant statement: "In addition to these principal changes in the stations of the troops more than 200 temporary detachments have been made from the garrison of posts for the purpose of aiding civil officers. These detachments have been made upon the requests of governors of states, sheriffs, and other local state, civil, and United States attorneys, marshals and officers of the internal revenue department." [3]

The Federal force act was "entirely unknown to" a great many

[1] Sen. Ex. Docs., 41st Cong., 3d Ses., No. 16, pt. 2, p. 36.
[2] Report of Sec. of War, 1871. [3] *Ibid.*

people "until they felt its effect," reported the commander of troops in North Carolina. "Consternation, fear, and alarm everywhere prevailed," he continued. Inquiries were addressed to Federal officials by frightened private citizens concerning "the probable action of the United States troops." [1]

The troops were obviously busy in maintaining the Republican régime by protecting negroes — but not always. In Louisiana one faction of the Republicans called for troops under the force acts to assist in subduing the other faction; while in North Carolina an even more paradoxical situation developed. The Federal military there intervened on the order of the Federal court to restrain the state militia from carrying out its threat of executing certain white prisoners accused of violating the Fourteenth Amendment. But in this case the Federal judge stated that he issued the order for the release of the white men because he regarded their treatment "as a violation of their rights under the Fourteenth Amendment" — apparently a case where the same amendment served a double purpose on the same occasion.[2]

The following year, 1871, witnessed a great advance in the policy of the Federal government's plan of enforcing the Fourteenth Amendment. Two new force acts were passed and the Federal courts became the tribunals of criminal prosecution on such a vast scale that the business could not be adequately handled.

The new force acts were: first, the Federal election law of February 28, 1871; and, second, the "Kuklux" or enforcement law of April 20, 1871. In all fundamental principles these statutes were but amplifications of the first force act (1870).

The election law is a detailed and cunningly drawn instrument of nineteen sections devoted entirely to regulating minutely the registration of voters and the conduct of the Congressional elections, through an elaborate system of Federal registration commissioners, election supervisors, marshals, and circuit judges. As the Congressional and state elections and many local elections

[1] Sen. Ex. Docs., 41st Cong., 3d Ses., No. 16, pt. 2, p. 19.

[2] Sen. Rpt., 42d Cong., 1st Ses., No. 1, pt. 1, p. 426 (index); Hamilton, "Reconstruction in North Carolina," p. 525.

occurred at the same time, the national government assumed practical control of the whole registration and electoral procedure.

The Kuklux Act was especially designed to destroy "conspiracies" in the South by the stricter enforcement of the Fourteenth and Fifteenth Amendments. The law made it a "high crime," punishable by a heavy fine and imprisonment to conspire against witnesses, or jurors, or office-holders, or the government, or against any citizen with a view to withholding from him the equal protection of the laws. Providing for juries purged of whites through a stringent oath, and empowering the President to suspend the privilege of the writ of *habeas corpus*, "when in his judgment the public safety shall require it," were the principal innovations introduced by the law.

There was of course bitter opposition in Congress to the passage of the Kuklux bill. The debate was similar to that of the year before. Republicans dwelt upon the "conspiracy and rebellion South" as ample justification for the measure. "Grand juries refuse to indict and petit juries refuse to convict," said Senator Sherman. The Democrats were helpless. "Here, sir, is a law," declared Senator Thurman, "which has been in force now nearly a year (the first force act, 1870) with Republicans everywhere in these states to execute that law, everywhere having power to execute it, the judges of your own appointment, the jurors selected by your own marshals, and they the appointees of the President of the United States, with every power with which government can clothe a judiciary, and now we are told that we must have some more law of the same kind." The bill passed both houses with the usual majorities — and, as far as statutes are concerned, the enforcement policy of the national government stood almost perfected in theory.

The Federal district and circuit courts soon had their hands full. Prosecuting attorneys, grand juries, and marshals filled the jails here and there with offenders. Before the end of 1871 the United States courts in Mississippi, North Carolina, and South Carolina were busily occupied with trials under the enforcement acts. All of the accused were indicted for "conspiracy," and the

subsequent trials were fought out mainly on conspiracy charges. These spectacular preliminary testings of the legal workability of the force acts became known as "the Kuklux trials."

In Mississippi 640 persons were indicted for violation of various sections of the Federal enforcement laws — most of the indictments setting forth a violation of section 6, of the act of May 31, 1870. More than 200 of these persons were arrested. The trials of a few of them were more or less spectacular. The cases opened at Oxford on June 28. "Able counsel were employed on both sides, and rarely has a criminal trial in Mississippi been conducted with more ability," concludes Professor Garner.[1] Federal troops were at hand to maintain order. No one was convicted, as the case turned on a motion to grant writs of *habeas corpus* to certain whites indicted and imprisoned for the murder of a negro. But the court decided that Congress had the power to enact legislation for the protection of negro citizens, even to the extent of depriving the state courts of jurisdiction over crimes by citizens of a state against their fellow-citizens. The judge, however, released the accused from jail upon heavy recognizance — and the whites of Mississippi rejoiced in what was popularly construed as a practical legal victory.

The course of events in South Carolina leading up to the "Kuklux trials" was even more exciting than in Mississippi.[2] Acting upon the findings of the attorney-general, President Grant declared that in some nine counties of South Carolina "two-thirds" of the whites "are organized and armed. They effect their object by personal violence, often extending to murder. They terrify witnesses. They control juries in the state courts, and sometimes in the courts of the United States."[3] To check this lawlessness the President, supported by the Kuklux Act of April, declared on October 16, these nine counties to be in a state of insurrection, and he suspended therein the privilege of the writ of *habeas corpus*.[4] In the midst of this troubled situation the trials began.

[1] "Reconstruction in Mississippi," p. 351.
[2] See Maj. Merrill's Report, Ho. Ex. Docs., 42d Cong., 3d Ses., No. 1.
[3] Ho. Ex. Docs, 42d Cong., 2d Ses., No. 268.
[4] *Ibid.*, No 55.

For many weeks, marshals, district attorneys, and military commanders in South Carolina had been active. Two hundred and twenty white citizens were arrested on indictment and thrown into jail by the Federal authorities. In addition, 281 others were arrested and thrown into jail without indictment at all. Practically all of these 501 persons were apprehended for violating section 6 of the first force act (1870) — the section relating to conspiracies. These prisoners, all Southern white men, were confined in jails, many of them not knowing upon what charge, and in the nine counties (where most prisoners were confined) they were deprived of the privilege of the writ of *habeas corpus*. The jails were guarded by Federal soldiers. The Kuklux "had terrified the negroes," reported Attorney-General Ackerman. Now the Federal government was terrifying, in time of nominal peace, the Southern whites — both guilty and innocent.

The first cases in South Carolina under the force acts were brought before the United States district court at Greenville in August, 1871. Twenty-three persons were indicted, two were acquitted, and only one was convicted.[1] In November the Federal circuit court at Columbia began the Kuklux trials.[2] Fifty-three out of the 501 prisoners haled before the court confessed to being in "combinations and conspiracies." Fifty of the confessed were sentenced to prison — and 10 of the number fined, in addition. Only 5 of the 501 were convicted at this term of court, and their trials became in some ways the most prominent development in the initial efforts to apply the force acts.

Amid much excitement the Federal circuit court convened at Columbia on November 28th. "Yesterday morning," recorded the clerk of the court, "at an early hour people in considerable numbers commenced flocking into the city, brought hither by the approaching Kuklux trials." [3] The defense prepared to test

[1] Sen. Ex. Docs., 42d Cong. 3d Ses., No. 32, p. 11.

[2] Reynolds, "Reconstruction in S. C.," pp. 202–216; Full Documentary Material in Kuklux Rpt., S. C.

[3] Ho. Rpts. 42d Cong. 4th Ses., No. 22, pt. 5, p. 1615.

every possible weakness, technical or otherwise, in the statutes. To aid the local counsel for defense a popular fund was raised among the whites to employ Mr. Reverdy Johnson and Mr. Henry Stanbery, both able lawyers and prominent Democratic leaders. "We believed," said Mr. Johnson, "that we understand the political institutions of our country; and with that understanding we both came to the conclusion that the two laws of 1870 and 1871, under which these proceedings in your state had been going on for some time, were unconstitutional and violative, not only of the rights of your state but of every state in the Union, as well as the rights of the individual citizen. We came, therefore, to see if that question or some question arising under these laws could not be transmitted to the Supreme Court of the United States, whose judgment would fix in these respects the true construction of the constitution."

On December 4 the contest began with the motion to quash the case of U. S. *v.* Allan Crosby, *et al.* "There was a large attendance inside the bar, and several judges represented the judiciary as spectators," so the clerk recorded. "The room back of the bar was filled and the galleries were crowded." Stanbery opened the argument on the motion to quash. The indictment contained eleven counts, all of which except two charged "conspiracy," and these two charged the commission of acts without allegation of prior conspiracy. All of the offenses but two involved in some fashion the right to vote. After two days of highly technical argumentation by attorneys the court gave its opinion. Two judges were on the bench. Six of the eleven counts were adjudged by them to be "bad" and were ruled out; two were held to be "good"; and on the remaining three the court was divided — which meant that the case would go on appeal to the Supreme Court of the United States. It was this appeal that the counsel for the defense was striving for. In setting forth its conclusions, the lower court held that "Congress has never assumed the power to prescribe the qualifications of the voters in the several states. To do so is left entirely with the states themselves."

After eleven days of preliminary and highly technical argumenta-

tion the court settled down to the trial of its first and perhaps its most important case — that of U. S. *v.* R. H. Mitchell, *et al.* The indictment here contained but two counts. The first charged a conspiracy to violate the sixth section of the force act of 1870 by intimidating certain prospective voters, negroes, from taking part in the fall elections in 1872 — then one year in the future. The second count charged a conspiracy to violate the same section of the same statute by having punished unlawfully certain negro voters for having voted in 1870. The whole case rested upon the conspiracy clause of the first force act.

The jury sworn in before a court room crowded with both anxious and amused spectators was composed mainly of negroes. It consisted of eleven blacks and one white, — "more like a silent minstrel than a jury," — as one man put it.[1] A noticeable feature of these Kuklux trials was the decided presence of negroes on all juries. The Federal grand jury in the Northern district of South Carolina that returned most of the indictments in 1871 consisted of 21 negroes and 6 white men.

The prosecution in the case of U. S. *v.* R. H. Mitchell sought to show the existence of a secret, oath-bound, armed and disguised organization; to prove that it pervaded a large portion of the country; that great numbers of negro citizens had been whipped and murdered by this organization to keep them from voting; that this same organization oppressed and finally murdered one Jim Williams, a negro militia captain, to prevent him from voting in 1872, and to punish him for voting in 1870. The killing of Williams by the Kuklux was dwelt upon. The case reads like a murder trial, pure and simple, rather than a trial for conspiracy to prevent citizens from exercising their constitutional rights. Mr. Stanbery opened for the defense. He pleaded with the jurors to forget that they as negroes stood in high judgment on white men. He then proceeded very ably to disprove the alleged facts of conspiracy; to prove that the men indicted were not the men who committed the crime of murder; and finally to

[1] Ho. Rpts., 4 Cong., 2d Ses., No. 22, pt. 5, p. 1678.

explain the motive back of the midnight expedition which took the life of the black militia captain.

It seems that as early as the month of August, in the year 1870, the governor of South Carolina, according to the evidence, had placed in the hands of certain negroes of York county "arms of the latest improvement," said Stanbery, "breech-loading rifles, called, I believe, Winchester rifles, the most improved and deadly weapon of that sort yet invented for rapid firing at long range." Stanbery dwelt upon Jim Williams's reputed assertion on many occasions, "If my party is beaten at this election I will kill from the cradle to the grave and lay this country waste." The whites had acted in self-defense, he maintained, when they killed Williams. "If you must always have a victim," said Stanbery in closing, "if when the right men do not appear you can get any man with a white face and punish him, vicariously, I do not want to see one of your race on a jury again." [1]

Reverdy Johnson, following Stanbery, made more of an eloquent stump speech than a legal argument, for he no doubt realized that a legal argument was useless. He surpassed even the prosecution in his condemnation of the crimes attributed to the Kuklux Klan. "Even if justice shall not overtake them," he declared, dramatically "there is a tribunal from which there is no escape. It is their own judgment; that tribunal which sits in the breast of every living man; that small still voice that thrills through the heart, the soul, and the mind, and as it speaks gives happiness and torture — the voice of conscience, the voice of God." [2] Mr. Johnson dealt a blow to the prosecution when he proved that their leading witness had been paid for his testimony by the attorney-general of the United States.

The pleading was closed by District Attorney Corbin. "This organization (the Kuklux Klan) to defeat the rights of our colored fellow-citizens must and shall be put down," he said to the negro jury. "Your verdict will mark an era in the history of justice in South Carolina." [3]

[1] Ho. Rpts., 42d Cong., 2d Ses., No. 32, pt. 5, pp. 1810–1819.
[2] *Ibid.*, p. 1821. [3] *Ibid.*, p. 1936.

The judge in his instructions to the jury stated that it rested upon an indictment of two counts — one for conspiracy to prevent illegally certain persons from voting; and the other for conspiracy to punish certain persons for having voted. If the jury should find that the purpose of the conspiracy was to prevent voting on account of color, then the persons in the conspiracy were guilty under the indictment. An association having such a purpose would be an unlawful combination. Each member of such an association would be a conspirator, and would be responsible personally for every act of the conspiracy, and for the acts of each member thereof done in furtherance of its purpose.[1]

The jury retired, and thirty-eight minutes later came back with the verdict "guilty of the general conspiracy" — whereupon the judge told them that they must find the prisoners guilty or not guilty of one or both of the counts in the indictment. The jury retired a second time, but soon returned for instructions. It retired for the third time and quickly came back with a verdict of guilty on the second count — not guilty on the first. That is, guilty of having conspired to punish certain persons for having voted.[2] This closed the case, for the motion for a new trial was not granted. The convicted were fined and sentenced to a term in prison.

The foregoing review of the case *U. S.* vs. *Mitchell* may be taken as fairly descriptive of the trials under the force acts in the South during the next four or five years. Black men on the grand juries, black men on the petit juries, broadly framed indictments under the 6th and 7th sections of the law of May 31, and an overwhelming mass of testimony from many negroes and some whites concerning outrageous lawlessness, were characteristic of these trials. Civil proceedings by *quo warranto* under the enforcement acts did not amount to much. None were reported after 1873. In all, 488 such *quo warranto* cases were tried — and 451 were dismissed. Only 26 went against the defendants.[3]

The busiest years for the courts in the carrying out of the

[1] *Ibid.*, p, 1836. [2] *Ibid.*, p. 1838.

[3] Rpts. of Attys.-Gen., 1871–1873.

enforcement program were 1871–1875. After that there was a marked decrease in cases. Most prosecutions were, of course, in the South. The expense of maintaining the Federal courts there was relatively high, amounting to from one million to one million and a half dollars each year — about 50 per cent of the total yearly expenditure of the department of justice in the 37 states of the Union. Fully 75 per cent of this amount expended in the South went "for marshals." In 1871, 314 cases were disposed of, 263 of these being in the South; in 1872, 856 cases — 832 in the South; in 1873, 1304 cases — 1271 in the South; in 1874, 966 — 954 in the South; in 1875, 234 — 221 in the South. After 1875 the South was freer of this nuisance. No more did the yearly total reach the 200 mark. In 1878 only 25 cases were reported in that section. However, cases under the enforcement act and after 1883, under the "election law" appear yearly in the attorney general's reports until 1897. Seven thousand three hundred and seventy-two such criminal cases, all told, were dealt with by the Federal courts between 1870 and 1897. Five thousand one hundred and seventy-two of these were in the South. The total number of convictions for the whole country amounted to 1423, acquittals 903, and cases *nolle prossed* or dismissed, 5046.[1]

While the "conspiracy" clauses of the force acts were the main reliance in drawing up indictments, the offenses charged were various. For instance, the district attorney's reports from Alabama for 1872 include the following: "breaking up a Republican meeting," "shooting down colored citizens in Eutaw," "threatening to drive a citizen of Washington county out of the county," "interfering with a United States marshal in the discharge of his duties," "conspiring together with intent to procure a false and fraudulent return from an election," "illegal voting," "beating

[1] Rpts. of Attys.-Gen., 1871–1897. The distribution of Force Act cases in the South was as follows:

S. C. 1519	Ala. 219	Va. 79
Miss. 1172	Fla. 181	Ga. 75
N. C. 623	Md. 162	Ark. 55
Tenn. 509	La. 161	
Tex. 283	Ky. 120	

a colored preacher for preaching radicalism," — and so on. Sometimes the enforcement laws were applied to negroes, as, for instance, when "thirteen colored citizens of Baldwin County, Alabama," were arrested, "for beating other persons of color to prevent their free exercise of the right of suffrage." [1]

From the foregoing review it will be seen how extensive was the jurisdiction of the Federal courts under these acts. Grand juries and district attorneys were wont to stretch the law to fit the crime or to describe the crime in such fashion that the law would fit it. But experience soon showed at least three fatal defects in successfully disposing of cases after the indictment stage. The real trouble began in the courts. In the first place, it was difficult to prove "conspiracy" and "intent" to deny rights under the constitution. The Federal courts insisted on reasonable testimony, and the judges, with some notorious exceptions, were generally fair in their rulings. The Reconstruction horror did not destroy the conservatism and integrity of the Federal judiciary in the South. Furthermore, the law could not keep the juries black. More and more white men came into numerical or moral preponderance on juries. White judges were inclined toward leniency in judging the white man prosecuted under the force acts on the testimony of black men. Race prejudice thus checked the rigid application of the law. About 20 per cent of the cases tried resulted in conviction. Fully 70 per cent were dismissed, quashed or nolle prossed.[2]

In the second place, there were not enough Federal courts to do the business. The very extent of the litigation under the enforcement acts soon overtaxed the capacity of the twenty-four district courts in the South. "The machinery for the execution of these [laws] never contemplated such a state of affairs as has existed," reported a Federal official in South Carolina. "The United States courts are choked with a quantity of business which amounts practically to a denial of a hearing of four fifths of the cases which are before them, while even the number of cases is but a small percentage of the gross violations of the law which are

[1] Sen. Ex. Docs., 42d Cong., 3d Ses., No. 32, p. 12.
[2] From an examination of Attys.-Gen. Repts., 1870–1897.

cognizable by these courts." [1] Grand juries and marshals, in fact, indicted and arrested ten times as many offenders as the courts could try then, or ever try, probably — if they were to attend to the other business of the courts.

In the third place, the enforcement policy broke down because the Supreme Court of the United States did not agree with the radical Republicans in Congress regarding the constitutionality of the enforcement laws. Cases on appeal reached that tribunal in 1876. Reverdy Johnson, Henry Stanbery, and others had striven to bring this to pass. They relied upon the court to do what Democratic members of Congress had failed to accomplish — and the court through a process of reasoning very similar to that of Democratic legislators, deprived the enforcement legislation of much strength when it rendered its decisions in the cases of United States *v.* Reese and United States *v.* Cruickshank, both in 1876.

"The Fifteenth Amendment to the Constitution does not confer the right of suffrage," the court concluded in the first case. "The power of Congress to legislate at all upon the subject of voting at state elections rests upon this Amendment and can be exercised by providing a punishment only when the wrongful refusal to receive the vote of a qualified elector at such election is because of his race, color, or previous condition of servitude. In the Cruikshank case the court declared that "the right of suffrage is not a necessary attribute of national citizenship. The right to vote in the states comes from the states. It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a state than it would be for false imprisonment or murder itself. The Fourteenth Amendment prohibits a state from denying to any person within its jurisdiction the equal protection of the laws, but this provision does not, any more than the one which precedes it, add anything to the rights which one citizen has under the constitution against another. The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound

[1] Ho. Ex. Docs. 42d Cong., 3d Ses. No. 1, Rept. of Maj. Merrill.

to protect all its citizens in the enjoyment of this privilege if within its power. That duty was originally assumed by the state, and it still remains there. The only obligation resting upon the United States is to see that the states do not deny the right. This the amendment guarantees, but no more. The power of the national government is limited to the enforcement of the rights guaranteed." [1]

Finally, there were reasons for the breakdown of the enforcement policy which arose directly from human prejudices rather than from legal technicalities. The laws were regarded by the masses of the Southern white people as odious and oppressive, and they exhausted every means to defeat their operation. They studied and assailed the weak points and took advantage of the infirmities which any United States officer charged with the enforcement of the law might possess. "If he is convivial, they wine and dine him; if he is more avaricious or impecunious than honest, they bribe him; if he is timid, they frighten and bully him." [2]

By 1874 the disintegration of Republican government in the South was clearly evidenced by the loss of elections through the decrease of black votes cast. If the practical object of the enforcement laws was to maintain the negro in the political position intended for him by Northern radicals, then the logic of events was proving the inadequacy of the laws. "It is absolutely essential," declared a great negro convention in Montgomery, December, 1874, "to our protection in our civil and political rights that the laws of the United States shall be enforced so as to compel respect and obedience for them. Before the state laws and state courts we are utterly helpless." The force acts were failing, and to the negro the question presented by the failure of their execution was whether his constitutional rights as a citizen were to be "a reality or a mockery; a protection and a boon, or a danger and a curse"; whether they were to be "freemen in fact or only in name"; whether the last two amendments to the constitution were to be

[1] Otto (Sec. Cit. Reports), 92, p. 214.
[2] Ho. Ex. Doc., 43 Cong., 3d Ses., No. 46.

"practically enforced," or to become nullities and stand only as dead letters on the statute books. Republicans throughout the South took up the cry for more enforcement laws from Congress — laws to remedy the defects in the statutes of 1870–1871.

It was suggested that all cases involving the negro be transferred to the United States courts, that at least one-half of juries in cases involving the negro be black, that grand and petit juries be purged of whites who "sympathize with the Kuklux Klan." They "get into grand and petit juries and make a dead-lock of judicial procedure," it was said. But Congress did not act upon the various suggestions from the South. In 1875 it passed Sumner's civil rights bill, which never proved workable. It refused to do more. The people of the North were, in fact, becoming disgusted with the Southern question, and the radical element in Congress felt the effects. The breakdown of Reconstruction is to be attributed in considerable extent to a dawning consciousness in the North of the real conditions in the South.

To-day only a small part of the enforcement legislation remains even nominally in force — some seven slightly important sections only, and these seven sections are practically dead letters. The other forty-two sections of the three force laws combined have been either repealed directly by the statute of February 8, 1894, or rendered obsolete by such laws as the disabilities act of January 6, 1898, or declared unconstitutional by the Supreme Court in the cases of United States *v.* Reese, 1876; United States *v.* Cruikshank, 1876; United States *v.* Harris, 1883; and James *v.* Bowman, 1903. The force acts were in fact out of joint with the times. They did not square with public consciousness either North or South. They belonged logically to a more arbitrary period. They fitted a condition of war, not of peace; and suggest an autocracy rather than a democracy. From many angles they were attacked and emasculated and then relegated to their proper place as curiosities in our political history. Their principal influence was in hastening the dissolution of the Kuklux Klan and similar organizations, and in enabling Southern Republicans to extend their period of control for a few years.

X

NEGRO SUFFRAGE IN THE SOUTH

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X

NEGRO SUFFRAGE IN THE SOUTH

THE history of negro suffrage in the United States may be divided into four periods: the first extending from 1619 to the adoption of the Federal constitution in 1787, the second from 1787 to the close of the Civil War in 1865, the third from 1865 to the adoption of the Mississippi constitution in 1890, and the fourth from 1890 to the present time.

I

The status of the free negro before 1787 has been considered from two widely different points of view. By some it has been assumed that he was a voter if he possessed the qualifications prescribed in the election laws of his colony or in the written constitution of his state. This may be called the legal view. It was held by Judge Gaston of North Carolina in State *v.* Manuel [1] in 1838 and by Judge Curtis in his dissenting opinion in the Dred Scott case [2] in 1857. Others contend that there was an unwritten as well as a written constitution, that the negro did not vote in any of the colonies before 1776 and probably did not vote in any of the states between 1776 and 1787, and finally that there is ample evidence to show that the people of the time did not believe he had the right to vote. This may be called the historical view. It was held by Judge Gibson of Pennsylvania in Hobbes *et al. v.* Fogg [3] in 1838 and by Judge Taney in the Dred Scott case.

During the colonial era the free negro was specifically excluded from the suffrage only in North Carolina, 1715–1735; South Carolina, 1716–1776; Virginia, 1723–1776; and Georgia, 1761–

[1] 4 Devereux and Battle, p. 25.

[2] 19 Howard, p. 393.

[3] 6 Watts, p. 533.

1776.[1] This does not mean, however, that he had the right to vote in the other colonies or in these colonies previous to his nominal disfranchisement or in North Carolina after 1735. It simply means that such legislation was generally considered to be unnecessary. In the early days, probably for two or three generations, the negro was looked upon as an alien and in consequence was excluded from political privileges by the English common law.[2] By the time he had ceased to be regarded as an alien, slavery had existed long enough to be taken as the normal status of his race, and he was still denied the right to vote. Whether exclusion on these grounds was legal or illegal depends entirely upon the standard by which it is tested. If the election laws of the seventeenth and eighteenth centuries are to be interpreted according to contemporary usage, its legality is beyond dispute. If, however, they are to be judged according to the canon of 1830–1860, the answer is not quite so obvious.

The question turns almost entirely upon the meaning of the word *freeman*. The right of suffrage in all colonies was restricted to freemen. There might be a freehold or some other form of property qualification, but freemanship was a minimum requirement. In New England the word was used, as it was in the mother country, to indicate a person who had been admitted to membership in a commercial or municipal corporation and had thus been made free to exercise the corporate privileges and franchises. In the Middle and Southern colonies, where the corporate idea did not prevail, the meaning was not so clear. During the seventeenth century the tendency was to follow English precedents and lay down certain definite requirements similar to those which might be demanded for admission into a corporation. In Pennsylvania, for example, the "Laws Agreed upon in England"

[1] McKinley, "The Suffrage Franchise in the Thirteen English Colonies in America," p. 474. Cooper and McCord, "Statutes at Large of South Carolina," Vol. II, pp. 683–691; Vol. III, pp. 135–140; Vol. IV, pp. 98–101. Hening, "The Statutes at Large . . . of Virginia, Vol. IV, pp. 133–134; Vol. VII, p. 519; Vol. VIII, p. 807.

[2] This argument was used in Massachusetts as late as 1778. See Moore, "Notes on the History of Slavery in Massachusetts," p. 190.

of May 5, 1682, define a freeman as a person who had purchased one hundred acres of land or upwards, and his heirs and assigns; a person who had paid his own passage over and taken up one hundred acres of land at a rent of one penny per acre and had cultivated ten acres thereof; a person who had served his time as an indentured servant and had taken up his fifty acres of land and cultivated twenty acres thereof; or a person who paid scot and lot to the government.[1] The Carolina charter of 1665 uses the term *freeman* synonymously with *freeholder*, and that custom seems to have been followed in both North Carolina and South Carolina for at least fifty years.[2]

As the eighteenth century advanced and the suffrage came to be more generally restricted to freeholders, the distinction between freeholders and freemen became more marked, and the latter tended to include all free men as opposed to slaves and indentured servants. There is plenty of evidence, however, to show that enough of the old theory survived, along with the feeling of caste, to prevent the free negro from being included. An act of the legislature of Pennsylvania, passed May 28, 1715, contains the following clause:

"That no freeman of this province shall be taken or imprisoned, disseized of his freehold or liberties, or be outlawed or exiled or any otherwise hurt, damnified or destroyed, nor be tried nor condemned but by the lawful judgment of his twelve equals or by the laws of this province."[3]

Another act of January 12, 1706, in force until 1780, provided for special courts for the trial of free negroes and slaves, which proceeded without a jury even in cases involving capital punishment.[4] Under an act of March 5, 1726, which was also in force

[1] Thorpe, "Federal and State Constitutions," Vol. V, p. 3060.

[2] "The Colonial Records of North Carolina," Vol. I, pp. 104–106. See also McKinley, "Suffrage Franchise," pp. 92, 130.

[3] Mitchell, and Flanders, "The Statutes at Large of Pennsylvania," Vol. III, p. 31. This act was repealed by the Lords Justices in Council, July 21, 1719, but the fact that it was passed, taken in connection with the other statutes mentioned above, is sufficient to show that the free negro was not regarded in Pennsylvania as a freeman.

[4] *Ibid.*, Vol. II, pp. 233–236.

until 1780, any able-bodied free negro who refused to work could be taken up by two magistrates and bound out to service from year to year.[1] There was enough legislation of this character in all the colonies to prove that free negroes did not anywhere possess the traditional rights of freemen.[2]

More specific evidence that the negro did not vote in Pennsylvania at the close of the colonial period is to be found in "The Remembrancer of Christopher Marshall." Speaking of the election of May 1, 1776, Marshall says: "This has been one of the sharpest contests, yet peaceable, that has been for a number of years, except some small disturbance among the Dutch, occasioned by some unwarrantable expressions of Joseph Swift, viz. that except they were naturalized, they had no more right to a vote than a Negro or Indian." [3]

When we come to the Revolution the question is more difficult. It was undoubtedly believed by a few people of the time that the doctrine of the rights of man required the enfranchisement of the negro as well as the abolition of slavery. Whether this belief was widely enough accepted in any of the states to affect his actual political position is hard to say. He was still specifically excluded from the suffrage in Georgia, South Carolina, and Virginia.[4] All of the other states required either the payment of a tax or the possession of property in some form, but there was no discrimination as to color unless the continuation of the old corporate idea of freemanship in Connecticut and Rhode Island or the require-

[1] Mitchell, and Flanders, "The Statutes at Large of Pennsylvania," Vol. IV, pp. 59–64.

[2] It is said that negroes voted in South Carolina in 1701 and 1703. The evidence, however, is not at all trustworthy, being based entirely on the complaints of a defeated faction who wished to have the elections set aside. Furthermore, the same evidence shows that if negroes did vote, it was in violation of the law. See Rivers, "A Sketch of the History of South Carolina to the close of the Proprietary Government by the Revolution of 1719," Appendix, pp. 455, 459, 462; Bishop, "History of Elections in the American Colonies," p. 52; McKinley, "Suffrage Franchise," pp. 137–138.

[3] Duane, William (Editor). "Passages from the Remembrancer of Christopher Marshall" (Edition 1839), p. 77.

[4] Thorpe, "Constitutions," Vol. II, p. 779; Vol. VI, pp. 3245, 3251; Vol. VII, p. 3816.

ment in the constitutions of Maryland, North Carolina, and Pennsylvania that voters must be freemen could be so interpreted.[1]

In spite of these facts, it is very doubtful whether the free negro, whatever may have been his property qualifications, was generally regarded as a legal voter or was actually allowed to vote in any of the states during the period from 1776 to 1787 or for some years afterwards. In Pennsylvania there seems to have been a general understanding up to 1780 that a free negro was not a freeman in the sense in which the word was used in the constitution of 1776. The abolition of the special negro courts, however, by the emancipation act of 1780 aroused some uncertainty as to the future status of the question. Twenty-three members of the assembly who signed a protest against the passage of the act gave as one of their reasons that it would have been wiser to emancipate the negroes "without giving them the right of voting for, and being voted into office." [2] That this view was not generally accepted is shown by the following extract from a pamphlet written in 1784 by Dr. Benjamin Rush: "It [the emancipation act of 1780] does not admit free negroes, it is true, to the privilege of voting, but then it exempts them from taxes." [3] Dr. Rush was an abolitionist and a most devoted friend of the negroes, and there was no point to be gained on this occasion by understating their rights. As a matter of fact, he was contending that the Quakers, who were disfranchised by the Revolutionary test acts, were worse off than the negroes, and it would have strengthened his argument if he had been able to say that the latter had the privilege of voting. In this statement we are given the clue to the method of disfranchisement used in Pennsylvania and possibly in some of the other states. The object of the clause in the constitutions of 1776 and 1790 requiring the payment of a tax as a prerequisite to the exercise of the franchise was not to raise revenue, but to provide a voting registration list. It was apparently the practice to demand the

[1] *Ibid.*, Vol. III, p. 1691; Vol. V, pp. 2790, 3084.

[2] "Journals of the House of Representatives of the Commonwealth of Pennsylvania," Vol. I, p. 436.

[3] Rush, Benjamin, "Considerations upon the Present Test Law of Pennsylvania," Philadelphia, 1784, p. 13.

payment of a poll tax and not to accept any other as fulfilling the constitutional requirements. In this way, negroes, even though they paid taxes on their property, could be excluded from the voting list by the refusal of the authorities to receive their poll taxes. Brissot de Warville gives the number of inhabitants of Pennsylvania paying poll taxes as 31,667 in 1760 and 66,925 in 1786. After commenting on the increase of population which these figures indicated, he goes on to say: "Observe in this stating, that the blacks are not included, which form about one-fifth of the population of the States." [1]

A thorough study of local sources would probably bring out similar evidence in other states. Thomas Pemberton, a Massachusetts antiquarian of the eighteenth century, wrote in 1795 that the qualifications required by the constitution of his state prevented "the colored people from being electors, or elected into a public office." [2] This view also had the powerful support of James Winthrop, for many years Chief Justice of the Court of Common Pleas of Massachusetts: "They are as much under the protection of government, and have the same privileges of schooling, as other people; but they can neither elect or be elected to offices of government." [3] Although there is some testimony on the other side of the question,[4] it can at least be said that the right of the negro to vote in Massachusetts under the constitution of 1780 was seriously questioned as late as 1795.

Among the many European travelers who came to the United States in the last quarter of the eighteenth century there was no keener observer than Brissot de Warville. He was a zealous

[1] Brissot de Warville, "New Travels in the United States of America, Performed in 1788" (Dublin, 1792), pp. 326–327. For other evidence on this point, see Turner, "The Negro in Pennsylvania," p. 185.

[2] Deane, Charles (Editor), "Letters and Documents Relating to Slavery in Massachusetts." (Reprinted from the Collections of the Massachusetts Historical Society, p. 393.) This is taken from a collection of letters written by prominent citizens of Massachusetts in 1795 to Dr. Jeremy Belknap, to be used by him in answering an inquiry of Judge St. George Tucker of Williamsburg, Virginia, as to the status of the negro in Massachusetts.

[3] *Ibid.*, p. 390.

[4] See, for example, *Ibid.*, pp. 382, 386, 400.

friend of the negroes and, in the course of his trip through New England and the Middle States in 1788, he made special inquiries in regard to their social, economic, and political conditions. His conclusions were in part as follows:

"Deprived of the hope of electing or being elected representatives, or of rising to any places of honour and trust, the Negroes seem condemned to drag out their days in a state of servility, or to languish in shops of retail. . . . But how can they be industrious and active, while an insurmountable barrier separates them from other citizens? Even on admitting them to all the rights of citizens, I know not if it would be possible to erect a lasting and sincere union."[1]

II

During the early years of the second period (1787–1865) the suffrage was gradually extended to free negroes, although no changes were made in the written constitutions. The process was quite arbitrary, being dependent upon the interpretation of the constitutional requirements made by local election officials. In Pennsylvania, for example, they voted in the counties of Allegheny, Bucks, Cumberland, Dauphin, Juniata, Westmoreland, and York, but not in any of the other counties or in the city of Philadelphia.[2] The same was true of North Carolina. The votes of negroes were accepted in a few counties, such as Chowan, Halifax, Hertford, and Pasquotank, and refused in other parts of the state.[3]

Under this system the privilege came in time apparently to be generally recognized throughout the states of Massachusetts and New Hampshire, where the negro population was very small. The other states, with the exception of New York and Rhode Island, soon began to take steps to make the negro's exclusion clear and unequivocal. This was done by the adoption of new

[1] Brissot de Warville, "New Travels," pp. 307–308.

[2] "Proceedings and Debates of the Convention of . . . 1838," Vol. IX, p. 380. See also "Pennsylvania Archives, Fourth Series," Vol. V, pp. 663–664. The statement that no negro had ever voted in the city or county of Philadelphia was made frequently in the Constitutional Convention of 1837–1838 without being challenged.

[3] "Proceedings and Debates of the Convention of North Carolina . . . 1835," p. 80.

constitutions, by constitutional amendments, or by ordinary statutory legislation, in Delaware, 1792;[1] New Jersey, 1807;[2] Maryland, 1783, 1810;[3] Connecticut, 1818;[4] North Carolina, 1835;[5] and Pennsylvania, 1838.[6] New York recognized the negro's right to vote, in her constitution of 1821, but only on condition that he possessed certain qualifications which were not required of white men. The negro must own a freehold estate worth two hundred and fifty dollars and have been a citizen of the state for three years. No property qualification was required of whites, and as a rule they were not expected to prove more than one year's residence.[7] These distinctions remained in force until the adoption of the Fifteenth Amendment.[8] In Rhode Island, as the old corporate idea of freemanship declined, negroes were probably admitted to the suffrage, although there must have been very few who could comply with the high property qualifications in force before the adoption of the constitution of 1842. After 1842, all who paid a small poll tax were eligible to vote in general

[1] Thorpe, "Constitutions," Vol. I, p. 574.

[2] The clause in the New Jersey constitution of 1776 providing that all inhabitants of full age who were worth fifty pounds proclamation money should be allowed to vote was interpreted in several counties as sanctioning both woman suffrage and negro suffrage. An act of the legislature in 1807 restricted the franchise to free white males. Elmer, "The Constitution and Government of the Province and State of New Jersey," in "Collections of the New Jersey Historical Society," Vol. VII (Newark, 1872), pp. 47–49.

[3] Negroes freed after 1783 and their descendants were disfranchised by statute in 1783. This exclusion was extended to all negroes by constitutional amendment in 1810. Brackett, J. R., "The Negro in Maryland," pp. 186–187. Thorpe, "Constitutions," Vol. III, p. 1705.

[4] Thorpe, "Constitutions," Vol. I, p. 544.

[5] *Ibid.*, Vol. V, p. 2796.

[6] *Ibid.*, Vol. V, p. 3108. In February, 1838, while the Constitutional Convention was still in session, the Supreme Court decided that the negro had never possessed the legal right to vote in that state, either in the colonial days or under the constitutions of 1776 and 1790. Hobbs *et al. v.* Fogg, 6 Watts, p. 533.

[7] *Ibid.*, Vol. V, pp. 2642–2643. On the principle that taxation without representation is unjust, negroes who did not possess enough property to be entitled to the suffrage were exempted from all direct taxes.

[8] Manhood suffrage, with a universal one year's residence requirement, was established for whites by an amendment of 1826, and was continued by the Constitution of 1846. *Ibid.*, pp. 2652, 2656.

elections unless, as has been suggested, they may have been ruled out by the provision that voters must be citizens of the United States.[1] The specific requirement in the Georgia Constitution of 1777 that voters must be male white inhabitants was omitted from the Constitutions of 1789 and 1798, but the clause which replaced it, "citizens and inhabitants of this state," was undoubtedly interpreted to exclude both women and negroes.[2]

Of the states admitted into the union subsequent to the ratification of the Federal Constitution and before 1865, the suffrage was limited to white adult males in Kentucky (1792),[3] Ohio (1803), Louisiana (1812), Indiana (1816), Mississippi (1817), Illinois (1818), Alabama (1819), Missouri (1821), Arkansas (1836), Michigan (1837), Florida (1845), Texas (1845), Iowa (1846), Wisconsin (1848),[4] California (1850), Minnesota (1858), Oregon (1859), Kansas (1861), West Virginia (1863), and Nevada (1864).[5] Tennessee, following the example of North Carolina, admitted all freemen to the suffrage in her Constitution of 1796.[6] A few free negroes were in time allowed to vote, but there was probably the same lack of uniformity as in North Carolina and Pennsylvania. In 1834 the suffrage was restricted to free white men, with the proviso "that no person shall be disqualified from voting in any election on account of color, who is now, by the laws of this

[1] *Ibid.*, Vol. VI, p. 3225. Mr. S. B. Weeks suggests that Rhode Island may have been influenced by the decision of Chief Justice Daggett of Connecticut in 1833 that slaves, free blacks, and Indians were not citizens in the sense that the word is used in section 2, article IV of the Constitution of the United States. *Political Science Quarterly*, Vol. IX, p. 677.

[2] *Ibid.*, Vol. II, pp. 789, 800.

[3] Negroes were not specifically excluded in Kentucky until the adoption of the second constitution in 1799. It is reasonably certain, however, that the phrase "free male citizens" in the Constitution of 1792 accomplished the same purpose.

[4] The Supreme Court of Wisconsin decided in 1866 that the suffrage had been extended to negroes by popular vote at an election held on November 6, 1849. Gillespie *v.* Palmer, 20 Wisconsin, p. 544. See also Olbrich, "The Development of Sentiments on Negro Suffrage to 1860," pp. 88–89.

[5] Thorpe, "Constitutions," *passim*. The dates are those of the admission of the states into the union and are not necessarily the same as the dates of the original constitutions.

[6] *Ibid.*, Vol. VI, p. 3418.

State, a competent witness in a court of justice against a white man." [1] Vermont (1791) and Maine (1820) were the only states admitted into the union before 1865 which did not, at one time or another, impose legal restrictions upon the negro's voting privileges.

To sum up, there were thirty-six states in the union in 1865; in five of these — Maine, New Hampshire, Vermont, Massachusetts, and Rhode Island — negroes apparently exercised full suffrage privileges; in one — New York — they could vote, provided they possessed certain qualifications as to residence and property which were not required of white men; in the remaining thirty states they were entirely disfranchised.

III

The period from 1865 to 1890 may be passed over very briefly. Negro suffrage was forced upon the District of Columbia by act of January 8, 1867, upon the territories by act of January 10, 1867, and upon the South by the Reconstruction acts of March 2, March 23, and July 19, 1867. An effort was made in the Fourteenth and Fifteenth Amendments to render this policy irrevocable and to extend it to those Northern states which would not adopt it of their own free will and which could not be reached by ordinary statutory legislation.[2] The control of the suffrage was left to the states subject to two restrictions: first, if the right of any adult male citizen of the United States to vote in the state in which he resides is denied or in any way abridged "except for participation in rebellion, or other crime, the basis of representation

[1] Thorpe, "Constitutions," Vol. IV, pp. 3433–3434. According to Mr. J. W. Caldwell, "All negroes, Indians, and persons descended from negro or Indian ancestors to the third generation were excluded." "Studies in the Constitutional History of Tennessee" (2d edition, 1907), p. 202. This apparently means that a person who had less than one-eighth of negro or Indian blood was legally regarded as white.

[2] Constitutional amendments establishing negro suffrage were rejected in Connecticut, Wisconsin, and Minnesota, 1865; in Kansas, Ohio, and Minnesota, 1867; in Michigan and Missouri, 1868; and in New York, 1869. The question in New York was of course the removal of the special property qualification required of negroes. Only two states, Iowa (1868) and Minnesota (1868) voluntarily granted the franchise to negroes before the ratification of the Fifteenth Amendment.

therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State"; secondly, "the right of citizens of the United States to vote shall not be abridged by the United States or by any State on account of race, color, or previous condition of servitude." [1]

The history of Federal control of elections in the South, the withdrawal of United States troops, and the gradual reassertion of white supremacy needs no repetition. Negroes were disfranchised by fraud, force, and bribery, not because such methods were preferred, but because they were necessary. The machinery of the law was utilized at the earliest possible moment. A few negroes were legally excluded from the suffrage by a tax-paying requirement, such as that embodied in the Georgia constitution of 1877, but the first elastic test — that is, a test which could be interpreted by registration or election officers to exclude most of the negroes and to include most of the whites — was that adopted in the new Mississippi constitution in 1890. The example of Mississippi was followed by South Carolina in 1895, Louisiana in 1898, Alabama in 1901, North Carolina and Virginia in 1902, and Georgia in 1908.[2]

Several factors combined to encourage and stimulate this movement:

First. There was a conservative reaction against the radicalism of the Reconstruction period. The people of the North were compelled to admit that, however qualified a few negroes might be to exercise the suffrage, the race as a whole had not yet reached that stage. They could not remedy the mistake themselves, but

[1] It is the belief of the writer that both of these restrictions are still in force, although some strong arguments have been advanced to prove that the former was nullified by the latter. See Garner, "The Fourteenth Amendment and Southern Representation," in *The South Atlantic Quarterly*, Vol. IV, pp. 209–216; Blaine, "Twenty Years of Congress," Vol. II, p. 418.

[2] Thorpe, "Constitutions," Vol. IV, pp. 2120–2121; Vol. VI, pp. 3309–3312; Vol. III, pp. 1562–1567; Vol. I, pp. 209–215; Vol. V, pp. 2835–2836; Vol. VII, pp. 3906–3911. "Acts and Resolutions of the General Assembly of the State of Georgia, 1908," pp. 27–31.

they were in general quite willing to sanction, or at least not to oppose, the efforts of the South to do so.

Second. There was a general feeling, in the North as well as in the South, that if the negro was to be excluded from his political privileges in any case it would be better for all concerned to have it done legally rather than illegally.

Third. The attempt of the Republicans during the Harrison administration to pass the Force Bill aroused a spirit of defiance in the South, a spirit which was strengthened by the knowledge that they had the sympathy of Northern Democrats and of a great many conservative Northern Republicans.

Fourth. The most important factor in conciliating Northern Republicans was the adoption of the policy of Imperialism which came with the annexation of Hawaii and the territory secured as a result of the war with Spain. For the first time they began to study the problem of the relations between white and colored races purely on its merits, without any sentimental prejudices growing out of a previous state of slavery or a civil war. They could not consistently support an educational test which placed the government of Hawaii in the hands of a small white minority and deny the same privilege to South Carolina and Mississippi. They could not consistently disfranchise ninety per cent of the Filipinos and a large percentage of the Porto Ricans and at the same time criticize the South for disfranchising a people who are certainly no better qualified to exercise political privileges.

Fifth. Since the beginning of our own Imperial experience, we, as a people, have become much better acquainted with the colonies of other countries. In the British West Indies negroes are allowed to vote, but the property requirements are so high that very few of them can qualify. There were 1986 registered electors in Barbadoes in 1911 in a population of 171,982, a percentage of 1.1, which is considerably lower than that of any state in the union.[1] In three of the self-governing colonies of South Africa — Natal, The Transvaal, and The Orange River Colony — the blacks are entirely disfranchised. They vote in Cape Colony, but under

[1] "The Statesman's Year Book, 1913," p. 284.

certain restrictions, and there is now on foot a movement to disfranchise them. They are excluded from both houses of the South African Parliament by the South Africa Act of 1909.[1] General Smuts declared recently that the clauses of the constitution relating to this question are the sign and seal that South Africa will never permit color any further privileges.[2]

Sixth. In the early nineties the Populist movement spread over the South, dividing the white population for the first time since the Civil War into two fairly evenly balanced parties. The Democrats utilized the negro vote to defeat the Populists in Alabama and Louisiana. There was a Democratic majority in twelve black belt counties of Alabama in the Kolb-Jones campaign for governor in 1892 of 26,246 and a Populist majority in the rest of the state of 14,811. The corresponding figures in the Kolb-Oates election of 1894 were 34,454 and 8688.[3] Governor Foster was elected in Louisiana in a similar manner by the black belt vote in 1896. Charges were freely made in both states that there was a great deal of fraud, and the people of the white counties at once started a movement to have the negro disfranchised. In North Carolina the conditions were just the reverse. The Populists and the white Republicans made use of the negro vote in 1894 and 1896 to defeat the Democrats. The results were worse than they were in Alabama and Louisiana because the Populists and white Republicans shared the spoils of victory with their dusky allies. There was a revival of the old corruption and misgovernment of the Reconstruction era, which culminated in a serious race war and the adoption of the policy of disfranchisement. In other words, when the white vote is divided the negro is bound to suffer. His enemies will fight him and his allies will not dare to protect him. Several other states would immediately have followed the example of these three had it not been for the discovery of a method of eliminating the negro and at the same time

[1] *Ibid.*, p. 200. [2] *The Contemporary Review*, Vol. 103 (March, 1913), p. 409.

[3] *The Nation*, Vol. 59, pp. 211–212. The twelve counties selected were those in which the negroes constituted more than two-thirds of the population according to the census of 1890.

avoiding the worst evils of the one-party system. This was accomplished by the Democratic primary. Although there are a few negro Democrats, the primary, generally speaking, is exclusively a white man's institution. It selects all candidates and determines all the more important local issues. The system, however, broke down in Georgia. The chief issue in the gubernatorial campaign of 1906 was that of railway regulation. Mr. Hoke Smith, the radical candidate, fearing that the conservatives would not abide by the result of the primary, but would carry the fight into the general election and try to win with the aid of the negro vote, announced that, if he were elected, he would recommend to the legislature the initiation of a constitutional amendment to disfranchise the negroes. He was elected and the amendment was passed by the legislature and approved by the voters at the autumn election in 1908.

Seventh. There has long been a general feeling in the South that the negro should be protected from intoxicating liquors, and a great many people would extend this protection to the white man as well. This is being done, partly by local option and partly by constitutional amendments or statutes establishing state-wide prohibition. Prohibition is to-day the most important issue in every Southern state. It is possible for the white voters to decide in the primaries whether they will have a prohibition governor and a prohibition legislature, but, in those states which still allow the negro a vote, local option or state-wide prohibition may easily be defeated by a minority of whites combined with the negroes. Whatever may be the motive, a fondness for liquor, a regard for personal liberty, or a pecuniary inducement, the negro vote is usually wet. It defeated state-wide prohibition in Texas in 1911 and it has defeated local option in innumerable contests. For this reason disfranchisement is almost certain to come soon in Texas and possibly in other states.

Let us now consider the process of disfranchisement. All of the seven states mentioned above — Mississippi, South Carolina, Louisiana, Alabama, North Carolina, Virginia, and Georgia — have attempted, by the adoption of new constitutions or consti-

tutional amendments, to exclude from the suffrage as many negroes as possible without coming into conflict with the Fifteenth Amendment. They have also endeavored not to disfranchise any white men who had the right to vote when the change was made. Two of them, Mississippi and Georgia, went further still and safeguarded the privileges of illiterate whites who would subsequently reach their majority or move into the state.

As a rule, there are two main sets of qualifications, the temporary and the permanent. The object of the temporary qualifications was to allow all white men who could vote when the change was made, and a few others who were almost of age at that time, to get their names entered on a registration list, which would guarantee them the right of suffrage for life.[1] This registration had to be made within a certain time, and all who had not registered when that period elapsed were disfranchised unless they could comply with the permanent qualifications. The chief feature of the temporary qualifications was the "grandfather clause." There were two main forms of this clause. One form provided that all persons who had served in the army or navy of the United States in any of its wars from the Revolution to the War with Spain, all who had served in the army or navy of the Confederate States or of the state in which they resided, and all lawful descendants of such persons might register, provided they possessed the ordinary qualifications as to age and sex. It is quite obvious that this would include nearly all white men and comparatively few negroes. Three states had this form, Alabama, Virginia, and Georgia. The second form made the distinction between whites and blacks still more definite, although it carefully avoided any mention of race, color, or previous condition of servitude. It provided for the registration, under the same conditions mentioned in form one, of all persons who could vote in the state in which they resided on January 1, 1867, and the lawful descendants of such persons. Two states had this form, Louisiana and North Carolina.

[1] That is, they were not required to comply with the permanent educational or property qualifications. They might, however, have to pay a poll tax or they might have to register from time to time according to the general election laws.

There were in some of the states other temporary qualifications which were alternative to the grandfather test. Foreigners who had resided in the state for five years and had been naturalized before January 1, 1898, were allowed to register in Louisiana. Virginia granted the privilege to those who owned property upon which they had paid a state tax of one dollar for the year preceding that in which they offered to register and to those who could read and give a reasonable explanation of any section of the state constitution or could understand and explain such section when it was read to them by a registration officer. Alabama admitted those who were of good character and who understood the duties and obligations of citizenship under a republican form of government. South Carolina had no "grandfather clause." All male persons of voting age, however, were allowed to register provided they could read any section of the constitution or could understand and explain it when it was read to them by a registration officer. The Constitution of Mississippi has no grandfather test or any other temporary qualification.

The temporary clauses were in operation in South Carolina from December 4, 1895, to January 1, 1898; in Louisiana from May 16, 1898, to September 1, 1898; in Alabama from November 28, 1901, to December 20, 1902; in North Carolina from July 1, 1902, to December 1, 1908; and in Virginia from July 10, 1902, to January 1, 1904. The Georgia clause is still in force, running from August 1, 1908, to January 1, 1915. Just before the North Carolina clause expired in 1908, serious efforts were made to extend it to 1912 or 1916. The bills introduced for that purpose were defeated in the legislature mainly on the ground that it was unwise to revive the suffrage question and take the risk of having it brought into the federal courts.[1] The people of Louisiana have not, however, been quite so conservative. By a constitutional amendment, adopted in November, 1912, their "grandfather clause" was reopened until September 1, 1913, and 9667 illiterate voters were added to the permanent list. Most of these additions come from the parishes of Acadia, Vermilion, Lafayette, St. Mar-

[1] Stephenson, "Race Distinctions in American Law," p. 316.

tin and Avoyelles, in all of which the percentage of illiteracy is high among both whites and blacks.[1]

The permanent qualifications, aside from the ordinary requirements of age, sex, residence, and citizenship, are based upon education, property, "understanding and character," and the payment of taxes. A would-be voter may qualify partially under any one of the first three tests or under the "grandfather clause," or some other temporary provision, but as a rule he cannot actually cast his ballot until he has paid taxes in one form or another. In other words, three of the tests are alternative and the fourth is additional.

Each of the states under consideration has an educational requirement. In order to qualify under this heading, the voter must be able, in North Carolina and South Carolina, to read and write any part of the state constitution; in Georgia, any part of the state constitution or the constitution of the United States; in Alabama, any part of the constitution of the United States; in Mississippi, he must be able to read any section of the constitution of the state. In Virginia and Louisiana he must, without assistance, make application for registration in his own handwriting.[2] Except in Louisiana, where the applicant may use his mother tongue, all of the states require, directly or by implication, that the test shall be in English. Four of the seven states provide a property qualification as an alternative to the educational requirement: the ownership of $300 worth of property in South Carolina and Louisiana, $300 worth of property or forty acres of land in Alabama, $500 worth of property or forty acres of land in Georgia.[3] There are no alternative property qualifications in

[1] "Acts Passed by the General Assembly of Louisiana, 1912," pp. 31–33. Private letter of December 15, 1913, from Hon. Alvin E. Hebert, Secretary of State of Louisiana. The amendment was adopted by a vote of 33,955 to 18,144. "The Encyclopædia Britannica Year Book, 1913," p. 819. The percentage of illiteracy among adult white males in the parishes mentioned above was, in 1910, 46.1 in Acadia, 41.6 in Vermilion, 41.3 in Lafayette, 44.0 in St. Martin, and 30.7 in Avoyelles. "Thirteenth Census, 1910," Vol. II, Population, pp. 779–789.

[2] There is of course a special provision made in all cases for those who are physically disabled.

[3] There are a great many complicated details. As a rule, all taxes must be paid

Mississippi, Virginia, and North Carolina. Two states, Mississippi and Georgia, have permanent "understanding" or "understanding and character" clauses. Those who cannot meet the educational test may qualify in Mississippi provided they are able to understand any section of the state constitution when read to them, or to give a reasonable interpretation thereof. Georgia accepts "all persons who are of good character, and understand the duties and obligations of citizenship under a republican form of government."

The payment of a poll tax is a prerequisite to voting in all the states under discussion. South Carolina requires the payment not only of a poll tax, but of all taxes collectible during the previous year, and Georgia the payment of all taxes which the voter has had an opportunity to pay since 1877. The poll tax must be paid for the preceding year in North Carolina and South Carolina, for the two preceding years in Mississippi and Louisiana, for the three preceding years in Virginia, and for every year since 1901 in Alabama. The amount of the tax, which is usually fixed in the constitution, varies from one dollar in Georgia and Louisiana to a possible three dollars in Mississippi. As a rule there are exemptions in favor of old soldiers or persons over a certain age, forty-five in Alabama,[1] fifty in North Carolina, and sixty in Mississippi and Louisiana.

These tests would exclude more negroes than whites even if they were enforced without any attempt at race discrimination. The enforcement is not impartial, however, and in some of the states it was obviously never intended that it should be. The property and poll-tax requirements are fairly rigid. Very few negroes have the requisite amount of property and very few are careful to pay their poll taxes long enough before the election to qualify for voting, but the tests themselves are exactly the same for both races. At the same time, it must be remembered that in some of the states the tax has to be paid for a long series of years, that tax receipts have an inconvenient habit of getting lost, and

upon the property for the year preceding the election. In Alabama and Georgia the voter who offers forty acres of land as a qualification must reside on the land. A man may qualify in Alabama on property owned by his wife.

[1] The legislature is authorized to raise the age of exemption in Alabama to sixty.

that local election officials may require proof of payment from the negro which they do not require from the white man. Taking the seven states as a whole, it is of course the educational qualification which permits the greatest amount of discrimination. The election officials may select an easy passage from the constitution for the applicant to read and write or they may select a difficult one; they may be satisfied with a poor performance or they may try to set an abnormally high standard. The "understanding clause" in Mississippi and the "understanding and character clause" in Georgia practically mean that in those two states the only test which the white man has to meet is the payment of taxes.

The four remaining states of the former Confederacy — Arkansas, Florida, Tennessee, and Texas — have not as yet found it necessary to adopt any method of disfranchisement other than that afforded by the poll tax and the primary. A disfranchising constitutional amendment was rejected in Arkansas in 1912 by a popular vote of 74,950 to 51,334.[1] The poll tax requirements in Texas are fairly typical. All male persons between the ages of twenty-one and sixty, with certain exceptions based upon the ground of physical infirmity, must pay the tax before the first of February of the year in which they wish to vote. In cities of more than 10,000 inhabitants those who are legally exempt must obtain certificates of exemption. No one is allowed to pay the tax for another person or give him money for that purpose. If the tax receipt or certificate of exemption is lost, the voter must make a written affidavit to that effect under oath before he is allowed to cast his ballot.[2]

Of the border states, West Virginia, Kentucky, and Missouri have no restrictions which could lead to racial discrimination. Delaware has the same educational qualification as California, Maine, and Massachusetts — the voter must be able to read the constitution in the English language and write his name. This

[1] "The Encyclopædia Britannica Year Book, 1913," p. 773.

[2] The constitutional amendment establishing the poll-tax requirement was adopted in 1903. For details see Weinert, F. C., Compiler, "Election Laws of Texas" (Austin, 1914), pp. 9–16.

provision was adopted with a time limit similar to the "grandfather clauses." The constitution was ratified in 1897, but the educational test is applied to those who have become of age or have become citizens of the United States since January 1, 1900.[1] This was not intended to discriminate against the negro and it is apparently very rarely enforced against either negroes or whites.[2] Maryland has universal manhood suffrage. In a few of the counties, however, the Wilson election laws make it possible for election officials to discriminate against ignorant voters by arranging the names of candidates without regard to party designations. Annapolis, Frederick City, and Ellicott City have attempted to disfranchise negroes in local elections through the enactment of local legislation of the "grandfather clause" type. The Annapolis law was declared unconstitutional by the United States circuit court in 1910 and it is now before the Supreme Court.[3] Constitutional amendments providing for the general disfranchisement of the negro in Maryland were submitted to popular vote and rejected in 1905, 1909, and 1911. The amendment of 1911 and the so-called Digges bills, vetoed by Governor Crothers in 1910, were based upon the theory that the Fifteenth Amendment is either invalid or at least not binding upon Maryland.[4] The failure of the movement as a whole has been due partly to the foreign vote, partly to the great influence exerted by Cardinal Gibbons, and partly to the fear of independent Democrats that its success would result in binding the state irrevocably to the Gorman machine.[5]

[1] Thorpe, "Constitutions," Vol. I, p. 620. There are similar clauses conferring suffrage for life upon illiterate voters in California, Maine, and Massachusetts. *Ibid.*, Vol. I, p. 452; III, pp. 1667, 1919.

[2] Manuscript account of the suffrage provisions in Delaware prepared by Philip Q. Churchman, Judge of the Municipal Court of Wilmington.

[3] Information furnished by Hon. W. Ashbie Hawkins and Mr. D. S. S. Goodloe, Principal of the Maryland Normal and Industrial School. *The Outlook*, Vol. 96, pp. 656–657.

[4] One of the arguments advanced in favor of this theory was that Maryland never ratified the Fifteenth Amendment.

[5] *The Nation*, Vol. 81, p. 371, Vol. 88, pp. 78–79; Vol. 90, pp. 334, 365–366; Vol. 93, pp. 90, 457. *The Outlook*, Vol. 94, p. 820. Stephenson, "Race Distinctions in American Law," pp. 317–320.

Oklahoma is another state whose negrophobia has been a source of embarrassment to the South. A constitutional amendment adopted in 1910 provides that no person shall be allowed to vote in any election unless he is able to read and write any section of the state constitution; "but no person who was, on January 1, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendant of such person, shall be denied the right to register and vote because of his inability to so read and write sections of such Constitution." The Supreme Court of Oklahoma upheld the validity of this amendment, October 26, 1910, and also decided that it did not exclude illiterate Indians. There was some rioting at the elections of 1910 and 1912 and various attempts have been made by the negroes to secure relief from the federal judiciary, but the question has not yet been passed upon by the Supreme Court.[1]

It is difficult to find any justification for the policy of disfranchisement in Maryland and Oklahoma. There is not the slightest danger of negro domination. According to the census of 1910, the population of Maryland was composed of 1,062,639 whites and 232,250 blacks; of Oklahoma, 1,444,531 whites and 137,612 blacks, the percentage of blacks in the total population being 17.9 in Maryland and 8.3 in Oklahoma. A very low property qualification, applying equally to both races, would undoubtedly be sufficient to maintain white supremacy in the black belt of Maryland, especially as the negroes constitute a majority of the adult male population in only one county.[2] In other words, by attempting to disfranchise the negro when it is not necessary, these two states have brought disrepute upon the laudable efforts which are being made to improve the character of the Southern electorate. Furthermore, Oklahoma's adoption of the "grandfather clause"

[1] *The Outlook*, Vol. 95, pp. 853–854; Vol. 96, pp. 655–656. *The Nation*, Vol. 91, pp. 406–407. "The American Year Book, 1910," pp. 113. "The Encyclopædia Britannica Year Book, 1913," p. 890.

[2] The percentage of negroes in the total adult male population in the chief black belt counties of Maryland is as follows: Charles, 52.3; Calvert, 48.9; and St. Mary's, 42.9.

as a permanent principle, and Maryland's brazen attempt openly to defy the Fifteenth Amendment, are almost certain in time to lead to a decision of the Supreme Court which may cripple the whole movement.

There are wide differences of opinion as to the actual number of adult male citizens who have been disfranchised in the South by these changes in the suffrage qualifications. The following tables will throw some light upon the question:

TABLE I[1]

	VOTERS, PRESIDENTIAL ELECTION, 1912	POTENTIAL VOTERS, CENSUS, 1910[2]	PERCENTAGE OF VOTERS TO POTENTIAL VOTERS
Virginia . . .	136,976	523,532	26.1
North Carolina	243,918	506,134	48.1
South Carolina	50,348	335,046	15.0
Georgia . . .	121,533	620,616	19.5
Alabama . . .	117,888	513,111	22.9
Mississippi . .	64,319	426,953	15.0
Louisiana . . .	79,372	414,919	19.1
Total . .	814,354	3,340,311	24.3
Tennessee . . .	247,821	552,668	44.8
Florida	51,891	214,195	24.2
Texas	305,120	1,003,357	30.4
Arkansas . . .	123,859	395,824	31.2
Total . .	728,691	2,166,044	33.6
The other states	13,493,497	22,839,721	59.0
The United States	15,036,542	28,346,076	53.0

[1] "Thirteenth Census, 1910," Vol. I, Population, p. 1035. "The World Almanac and Encyclopedia for 1914," p. 725.

[2] Under *potential voters* are included all adult males in the United States and all adult females in those states which had women suffrage in 1912.

TABLE II[1]

		VOTERS, PRESIDENTIAL ELECTION, 1912	ADULT MALES, CENSUS, 1910	PERCENTAGE OF VOTERS TO ADULT MALES
Virginia	White Counties	41,122	99,210	41.4
	Whitest Counties	3,884	8,733	44.4
	Black Counties	19,024	104,775	18.1
	Blackest Counties	1,539	8,828	17.4
North Carolina	White Counties	60,363	89,819	67.2
	Whitest Counties	7,074	9,054	78.1
	Black Counties	20,144	66,012	30.5
	Blackest Counties	3,622	13,176	27.4
South Carolina	White Counties	12,129	64,562	18.7
	Whitest Counties	1,731	11,319	15.2
	Black Counties	16,282	133,601	12.1
	Blackest Counties	2,083	21,468	9.7
Georgia	White Counties	13,514	39,769	33.9
	Whitest Counties	2,762	7,004	39.4
	Black Counties	2,665	23,607	11.2
	Blackest Counties	709	9,071	7.8
Alabama	White Counties	47,702	133,354	35.7
	Whitest Counties	4,595	9,062	50.7
	Black Counties	10,134	78,742	12.8
	Blackest Counties	1,027	11,979	8.5
Mississippi	White Counties	11,917	44,926	26.5
	Whitest Counties	1,927	6,118	31.4
	Black Counties	8,629	122,421	7.1
	Blackest Counties	304	8,187	3.7
Louisiana	White Counties	7,968	39,869	19.9
	Whitest Counties	614	3,513	17.4
	Black Counties	1,606	23,261	6.9
	Blackest Counties	427	7,676	5.5

[1] "Thirteenth Census, 1910," Vol. II, Population, pp. 45–59, 372–399, 777–789, 1043–1059; Vol. III, Population, pp. 293–311, 657–665, 936–961. "The World Almanac and Encyclopedia for 1914," pp. 729–775. Owing to the unequal distribution of the negro population it was impossible to use the same standard of classification in each state and get large enough numbers to make a fair comparison. White Counties are those which have a negro population of less than 12½ per cent

TABLE III[1]

	VOTERS, PRESIDENTIAL ELECTION, 1912	WHITE ADULT MALES, 1910	NEGRO ADULT MALES, 1910	ILLITERATE ADULT MALES, 1910
Virginia . . .	136,976	363,659	159,593	92,917
North Carolina	246,918	357,611	146,752	107,563
South Carolina	50,348	165,769	169,155	90,907
Georgia . . .	121,533	353,569	266,814	141,541
Alabama . .	117,888	298,943	213,923	124,494
Mississippi . .	64,319	192,741	233,701	107,843
Louisiana . .	79,372	240,001	174,211	118,716
Total . .	817,354	1,972,293	1,364,149	783.981
Tennessee . .	247,821	433,431	119,142	86,677
Florida . . .	51,891	124,311	89,659	29,887
Texas . . .	305,120	835,962	166,398	109,328
Arkansas . .	123,859	284,301	111,365	53,440
Total . .	728,691	1,678,005	486,564	279,332

These tables show that the percentage of actual voters to the adult male population is smaller in the seven disfranchising states than it is in the rest of the South and that it is smaller in the other Southern states than it is in the North. They also show that the black belt vote is far below that cast in the white counties. That was to be expected. The figures are, however, misleading in that they may be taken to indicate a much more extensive disfranchisement than actually exists. It is generally admitted that the number of whites who are excluded for any reason other than the failure to pay a poll tax is exceedingly small. Yet in every Southern state the number of voters in 1912 was considerably

in Virginia, North Carolina, and Georgia; less than 25 per cent in Alabama, Mississippi, and Louisiana; and less than 37½ per cent in South Carolina. Black Counties are those which have a negro population of over 50 per cent in Virginia and North Carolina, 62½ per cent in South Carolina and 75 per cent in Georgia, Alabama, Mississippi, and Louisiana. The Whitest Counties and the Blackest Counties are the groups of three to five counties in each state which have the highest percentages of whites and blacks respectively.

[1] "United States Census," Vol. I, Population, pp. 1035, 1257–1259.

below the number of adult white males, the number of literate adult males of both races, or even the number of literate adult white males. It is quite obvious, therefore, that a great many men who are qualified, or could easily qualify, to vote, do not take the trouble to do so. The total registration in Alabama up to and including the election of 1908 was 254,573, of whom 250,831 were whites and 3742 were negroes, but the vote for president in that year was only 103,809.[1] This is undoubtedly due mainly to the primary system. There were 132,401 votes cast in the Democratic senatorial primary in Mississippi in 1911,[2] which was more than double the total vote for president in the following year. The primary vote for governor in Louisiana in 1912 was 123,408, the vote for president in the general election of that year was 79,372.[3] There were 168,750 votes cast in the gubernatorial primary in Georgia in 1912, an excess of 47,217 over the presidential vote.[4] Numerous other examples could be cited, but these will be sufficient to prove the point. It is a fact of some significance that North Carolina, the only Southern state which does not have the primary system, shows the largest percentage of voters.

The constitutionality of the suffrage provisions has been so exhaustively treated by Mr. J. M. Mathews,[5] Judge John C. Rose,[6] and others that there is little left to be said. Before the disfranchising movement had actually begun, the Supreme Court had already laid down the principle that the Fifteenth Amendment does not confer the right of suffrage upon any one, but that it merely prevents the states or the United States from giving preference in voting to one citizen of the United States over another on account of race, color, or previous condition of servitude.[7] The

[1] Owen, T. M. (Compiler), "Alabama Official and Statistical Register, 1913," pp. 262–263; "World Almanac for 1914," p. 725.

[2] "Biennial Report of the Secretary of State to the Legislature of Mississippi, 1909–1911," p. 78.

[3] "The World Almanac for 1914," p. 727.

[4] *Ibid.*

[5] "Legislative and Judicial History of the Fifteenth Amendment," Baltimore, 1909.

[6] "Negro Suffrage: the Constitutional Point of View," in *The American Political Science Review*, Vol. I, pp. 17–43.

[7] U. S. *v.* Reese, 92 U. S., p. 214.

first important case to be decided after 1890 was that of Williams *v.* Mississippi.[1] It was claimed not that the constitution of Mississippi specifically discriminated against the negro, but that such discrimination was effected by the discretionary authority conferred upon the administrative officers. The court held that it was necessary to prove that the actual administration of the suffrage clauses was evil and not simply that evil was possible. In Giles *v.* Harris [2] the court took the stand that as the ground of complaint was the illegality of the suffrage provisions of the constitution of Alabama, it could not compel the registration officials to add the plaintiff's name to the registry list without becoming a party to an unlawful scheme. Furthermore, it was beyond the powers of a court of equity to remedy the alleged wrong. "Apart from damages to the individual," says the court, "relief from a great political wrong, if done as alleged by the people of a State and by the State itself, must be given by them or by the legislative and political departments of the Government of the United States."

These decisions are sometimes cited as upholding the disfranchising provisions of the Southern constitutions, "grandfather clauses" and all. Technically of course that is not the case, but they do make it practically impossible to attack those provisions successfully without the aid of Congressional legislation. At present there seems to be no danger that any part of the system will be overthrown unless the radicalism of Maryland and Oklahoma either compels Congress to take some action or leads to a decision of the Supreme Court which will open up a new line of attack. The Southern states are becoming more prosperous, friction between the two races is apparently declining, and it is probably only a matter of time when the pendulum will swing in the other direction and a steadily increasing number of negroes, who are qualified by intelligence and character, will be readmitted to the voting ranks.

[1] 170 U. S. p. 213. [2] 189 U. S., p. 475.

XI

SOME PHASES OF EDUCATIONAL HISTORY IN THE SOUTH SINCE 1865

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XI

SOME PHASES OF EDUCATIONAL HISTORY IN THE SOUTH SINCE 1865

The advent of Southern leadership in national affairs which followed the elections of 1912, when contrasted with the humble share of the South in the federal patronage in 1876, is one of the significant political phenomena of this generation. The vast increase in Southern industries since 1890, together with the rise in the price of cotton and the resulting agricultural prosperity, suggests an influence in the life of the nation far more permanent than political leadership. Slowly but surely another development, more significant of the temper of the Southern people and more promising for Southern character in the future than these, has been going on. I refer to the growth of a new sentiment and of new policies in the matter of education. On no one vital question was there more apathy and diversity of opinion at the close of the Reconstruction period than the need of better educational facilities. On no one question to-day is there more unanimity and positive action among all classes and in all sections of the South. This public opinion is still nascent; while older than the return of political leadership, it is younger than, or at least contemporary with, the industrial revival. A review of its origin and development, however casual, reveals the growth of a new conception on the part of the citizen of his duty to his fellows. Educational history in the South since the war is therefore the biography of a new social consciousness. Born in poverty, cherished by a few devoted friends and philanthropists, betrayed occasionally by politicians, at times subordinated to dogma political as well as ecclesiastical, finally arriving at a healthy maturity within the last two decades — what better subject can there be for the historian, the economist, or the literary artist of the future?

I

The Rise of Public School Systems

While the new educational opinion has not been confined to any one type of institution, its most significant influence has been felt in the public school system. In 1912 the expenditures for common schools were $43,979,605, an increase of $27,370,088 compared with that in 1900, and of $39,000,000 with that in 1880. The desire to correlate the schools with problems in the life of the people is illustrated by the organization of departments of manual training and domestic science, by corn clubs and tomato clubs, traveling libraries, and the rise of a new type of institution, the agricultural high school. What were the antecedents of this vast development, and what have been the forces guiding it?

There were in existence a number of conditions about the year 1870 which were not favorable to progress in public education. One of these was the collapse of the ante-bellum school systems. Prior to 1860 every Southern state made some provision for public schools. The revenue came principally from funds or endowments, whose income was supplemented by local taxes in Alabama, Florida, Georgia, Mississippi, and North Carolina; by state taxation in Arkansas, Louisiana, Tennessee, Texas, and Virginia; by legislative appropriations in Georgia and Tennessee, while in South Carolina the entire revenue was derived from the latter source.[1] One of the chief arguments advanced in favor of establishing a system of public instruction was the duty of the state to the pauper child; by 1860 the only states in which any discrimination was made between the children of the poor and the well-to-do were South Carolina and Georgia. In the same year there were 595,306 children enrolled in ten of the eleven states that soon after experimented with secession.[2] With the general de-

[1] Knight, "Influence of Reconstruction on Education in the South," pp. 90–94.

[2] Statistics compiled by the writer from state reports on education and from other sources.

moralization which attended the close of the war, the schools collapsed. This was due in part to the impairment of educational funds; for example, a large part of North Carolina's fund consisted of bank stock; the banks having invested in Confederate bonds during the war, were forced to close their doors in 1865, their stock became worthless.[1] In Texas $1,000,000 of the educational fund are said to have been used for military purposes, and all war debts were invalidated by the Convention of 1865.[2] In all the states the value of railroad and other industrial stocks in which the educational funds were partially invested, declined. Moreover, the general uncertainty concerning the future of the state governments prior to 1868 made a revival of the school systems hardly possible; yet Georgia, Texas, Alabama, and Arkansas undertook the task. The futility of the efforts was well summarized by Dr. J. L. M. Curry when he declared that in 1866 "not a single Southern state had a system of free public schools, and only in a few cities were any such schools to be found."

Provision for public education was made in all the Reconstruction constitutions and by the governments established under them. But unfortunately the general state of society in the South from 1868 to 1876 was not conducive to educational progress. The public debts were vastly increased. Poverty was everywhere, the average wealth per capita in the entire South in 1880 being $851 as compared with $2225 in the Northern and Central states. There was also a scarcity of adult men to undertake the hard task of intellectual and economic reconstruction, the number of adults in the South in 1880 being 446 per 1000 as compared with 524 per 1000 in the North Central, and North Eastern states. Seven of the strictly Southern states had more women than men. For the new school systems established by the carpet-baggers to be popular or effective, honesty and tact in their administration was necessary. However, extravagance and corruption were all too common in the handling of educational revenues. In South Carolina between 1869 and 1876 the schools were entitled to $1,321,893

[1] Report Superintendent of Education, 1869, p. 30.
[2] Proceedings of the Peabody Trustees, 1877.

which they never received.[1] In North Carolina, $136,076.92 were collected for educational purposes in 1870, but only $38,981 were received by the department of education.[2] In Louisiana $1,000,000 of bonds belonging to the school fund were sold and the proceeds were used to pay the expenses of the legislature in 1872, while in Texas a large part of the income from public lands belonging to the educational fund was lost through inefficient relief laws.[3] In 1870 the school revenue of Georgia was partially diverted to other uses, Alabama had a similar experience in 1874, and in Tennessee under the radical régime from 1866 to 1869 only 47 per cent of the school taxes were spent on the schools.[4]

The greatest hindrance to popular education during the period of Reconstruction was the race problem. In each of the conventions that framed the Reconstruction constitutions the question of mixed schools was discussed. In the constitutions of South Carolina and Louisiana separation of the races in public schools was distinctly prohibited; in Alabama the board of education favored mixed schools but allowed separate schools when they were desired; in Mississippi fear that coeducation of the races might prevail aroused hostility to public education. Agitation of racial equality led to a clause prohibiting separate schools in the original draft of the federal civil rights bill of 1875, but it was dropped out through the influence of the trustees of the Peabody Fund.[5] The education of several million people who had been recently slaves with taxes derived to a large degree from their former masters, was a problem that had never before appeared in modern history. It required "patience, patriotism, humanity, and civic duty." To require or to suggest the education of the negroes in the same schools as the whites was distinctly a blow

[1] Knight, *op. cit.*, p. 79. [2] *Ibid.*, pp. 31, 32.

[3] Ficklen, "Origin and Development of the Public School System of Louisiana" (Report U. S. Com. of Ed., 1894–1895, Vol. II, p. 1297); Law, "History of Education in Texas," p. 35.

[4] Mayo, "Final Establishment of the Common School System in N. C., S. C., and Ga." (Report U. S. Comr. of Ed., 1904, Vol. I); MSS., U. S. Bureau of Education.

[5] Curry, "Biographical Sketch of George Peabody."

to the cause of white as well as of negro education. Dr. Sears wrote in 1874 concerning the clause proposed in the civil rights bill:

"At no time since the war has the party of progress been in so critical a condition as it has been since the agitation of mixed schools in Congress. Even the shadow of coming events has had a disastrous influence. In one or two states contracts with mechanics for school houses and with teachers for opening schools were immediately suspended; and the highest and best school officers of the state, seeing that their fondest expectations were likely to be blasted, were looking around for more hopeful spheres of labor. Already an amount of mischief has been done which it will take years to repair. Confidence has been shaken; and men who stood firm before have become despondent and are retiring from the field." [1]

Evidently progress in public education depended on the elimination of the issue of mixed schools, the development of adequate school revenues, an increase of wealth which would provide a basis for that revenue, and the rise of a new generation of adult males. The question of mixed schools was forever settled by the victory of home rule policy which came in 1876; for revised constitutions and laws shaped by the native whites eliminated all possibility of both races attending the same public school. The problem of an adequate revenue was not so easily settled; around it has centered all other educational questions, such as the length of the school term, salaries and equipment, and integrating the duty of education in the political ideals of the people. Hence the story of the public school movement since 1876 centers around the means by which the school revenue has been increased.

A beginning was made by the Reconstruction constitutions; in all of them state taxation for schools was a distinct feature. This was previously unknown in the school laws of Alabama, Florida, Arkansas, Georgia, Mississippi, North Carolina, and South Carolina.[2] The principle of direct taxation was undoubtedly the most important contribution of the Reconstruction régime to the public school movement in the South. It was perpetuated in all the revisions of the constitutions under the home rule policy

[1] "Proceedings of the Peabody Trustees," 1874, p. 62.
[2] Knight, *op. cit.*, pp. 90–94.

with the exception of Alabama. However, the revenue from state and local taxation was not sufficient to maintain effective school systems. In 1880 the school population in the eleven Southern states was 4,067,532, the average enrolment in the schools was 48.5 per cent, the school revenue averaged $3.23 for each child enrolled, and the average school term was only 67 days, figures far below those for the Northern and Central states, although the decade from 1870–1880 was not one of educational progress throughout the country at large. The limit of direct state taxation, the chief support of the schools in the South, seems to have been reached in 1890, for the income from this source ten years later showed no increase, and the income from local taxation increased less than $3,000,000 during the same decade. The outlook for public education in most of the Southern states for twenty years after the overthrow of the Reconstructionists was not promising. The truth is, the victory of home rule in 1876 was followed by a period of indifference, if not of hostility, to the cause of public education. There was a conservatism toward public expenditures of any kind, a reaction against the extravagance of Reconstruction. The aristocratic conception of education was strengthened by racial relations and the economic depression which prevailed prior to 1890. The function of the state, it was frequently urged, is to protect personal liberty and property, and it cannot be extended justly to education. Other arguments frequently advanced were that education is not necessarily conducive to good citizenship and that it might arouse discontent among the laboring classes. Instruction by the state was especially attacked as an usurpation of parental rights, while taxes imposed upon the thrifty and industrious for the benefit of the children of vagabonds were denounced as unjust. Such moral conceptions of public education were reinforced by the political slogan of low taxes and white supremacy.[1]

The reactionary mood bore fruit in administrative and legislative policies. In 1879 Dr. Ruffner, superintendent of education

[1] "Remarks of Barnas Sears," in "Proceedings of the Peabody Trustees," 1875, pp. 20–47.

in Virginia, declared that $1,000,000 belonging to the public school fund of that state had been used for other purposes.[1] In Georgia the legislature of 1876 destroyed $350,000 of bonds issued in 1859–1860, which belonged to the school fund, in order to escape the obligation of redemption.[2] Tennessee, in reaction against the mismanagement of the school funds during the Reconstruction period, abolished the general tax for school purposes in 1869 and the administrative system created by the reconstructionists.[3] The Alabama constitution of 1875 substituted for the provision in the constitution of 1867 requiring that one-fifth of the state revenue be devoted to education, direct appropriations by the legislature.[4] In Arkansas the income from land sales which should have gone into the school fund was used for other purposes.[5] The Louisiana constitution of 1870 charged the interest on the $1,000,000 of bonds sold by the Reconstructionists to the school revenue as well as interest on funds belonging to higher education, while the legislature of 1882 not only reduced the school tax but appropriated $10,000 of the school revenue to three universities.[6] In Texas the whole structure of the public school system was altered in 1875 and 1876, a voluntary county system being substituted, and in 1879 a bill increasing the appropriation for schools was vetoed by the governor and the next legislature approved his action. The same year a new school law of North Carolina was declared unconstitutional because not signed by the presiding officers of the legislature, while in 1883 the salary of the office of county superintendent was so reduced that many superintendents resigned.[7]

[1] MSS., U. S. Bureau of Education.

[2] Mayo, "Final Establishment of the American common school system in N. C., S. C., and Ga."

[3] MSS., U. S. Bureau of Education.

[4] Const. 1875, Art. XII; *cf.* Const. 1867, Art. XI.

[5] Report Supt. Public Instruction, 1895, pp. 171–172.

[6] Ficklen, "Origin and Development of the Public School System of La." (Annual Report U. S. Com. of Ed., 1894–1895, Vol. II, p. 1297.)

[7] Annual Report U. S. Com. of Ed., 1880, p. 311. MSS., U. S. Bureau of Education.

Evidently the effectiveness, if not the very existence, of public education in the South depended on a new integration of the public school ideal in popular opinion which would express itself in local taxation first, then in an increase of general state taxation. The first movement in this direction was made in the towns and cities before the close of the Reconstruction period. Destitution and suffering, when experienced by groups, aroused a sense of educational duty. It was fostered and materially aided by the Peabody Fund, the gift of $1,000,000 by George Peabody in 1867 for the cause of education in the South, increased to $2,000,000 in 1869.[1] Under the advice and leadership of Barnas Sears, first general agent of the Peabody Fund, the principal was kept intact and the interest was used to supplement local taxation for schools and to train teachers. By such a policy school salready established were strengthened in such important centers as Norfolk, Vicksburg, Mobile, and Charleston; and public school systems were inaugurated in Atlanta, Knoxville, Chattanooga, Columbia, and Montgomery, and a large number of minor towns and cities. Typical incidents illustrative of the policy of the Peabody trustees took place at Houston, Texas, and Rome, Georgia. In the former city, "on one dismal night at a public meeting where many were called but few were in attendance, to devise some method of improved education, at the moment when the small audience was about to disperse, a quiet old gentleman entered the room and in a voice scarce above a whisper from protracted loss of speech, caused by overmuch public use, told the little crowd his name and office with an offer to advance a third of the sum necessary to establish a public school system." [2] The visitor in question was Barnas Sears, and from his offer that night dates the public school system of Houston. In Rome Dr. Sears met the mayor and council and

[1] In addition Mr. Peabody gave approximately $1,483,000 in state bonds of Florida and Mississippi. These were among the securities repudiated by those states and no interest was realized. See Curry, "Sketch of George Peabody," pp. 141–176.

[2] Mayo, "Address on J. L. M. Curry" (Annual Report of U. S. Com. Ed., 1903, Vol. I, p. 135).

ascertained that the people were paying annually about $8000 for the support of a private school. "I soon convinced them," he says, "of the want of economy in paying so much money and yet educating only a small number of children. Some of the wealthier men admitted that a liberal tax, which would open the schools to all, so that their children and the children that now go without education should be placed in schools together, would cost less than they now pay. These gentlemen, and other citizens who met with them, representing the wealth and intelligence of the town, voted informally to raise by tax $3000 and to make the schools free to all who are not now in them. If there should be any difficulty in levying the tax, the income is to be raised by subscription. The pledge was accepted and the $1000 promised" (on behalf of the Peabody Fund).[1] Altogether 224 town and city systems were aided by the Peabody trustees, one-half of the disbursements being for this purpose prior to 1890.

The principle of local taxation took root in the country districts much more slowly than in the towns and cities. This was partially due to that apathy toward community interests so often found in farming sections. Another factor was the inefficiency of the laws providing for local taxation. In Virginia, controlling power over local taxation was virtually placed in the hands of the county judges and supervisors.[2] In Georgia the matter was made dependent upon the order of a grand jury and two-thirds of the voting population.[3] The courts, so frequently the weather-vanes of conservatism, illustrate the reactionary attitude. In North Carolina the constitution of 1868 required that schools be open four months in the year, but limited the total tax rate to two dollars on the poll and sixty and two-third cents on the hundred dollars value of property. A law of 1885 provided that if the state school tax was insufficient to maintain a four months' term, the county boards of commissioners might levy a local tax to carry into effect the educational clause of the constitution.[4] However, the supreme court declared a levy made in accordance with the law invalid

[1] "Proceedings of the Trustees of the Peabody Fund," Vol. I, p. 75.
[2] Acts, 1883, Ch. 138. [3] Laws, 1872. [4] Laws, 1887, Ch. 174.

because it made the tax rate in the county exceed the constitutional limitation.[1] Not until the educational movement of the past decade was well under way did the court change its restrictive policy and declare the educational mandate of the constitution superior to the limitation on the taxing power.[2] In Tennessee and Alabama the courts were also obstructive, holding that school districts were not municipal corporations and therefore did not have the right under the existing constitutions to levy taxes.[3]

Elsewhere the cause of local taxation was more fortunate. The reconstruction constitution of Florida provided for local taxation, requiring the counties to raise one-half the amount apportioned from the state funds, and a constitutional amendment of 1885 raised the local tax rate for schools from one to three or five mills.[4] The Arkansas constitution of 1874 provided for local taxation to the limit of five mills with immediate response.[5] In these two states almost from the close of the Reconstruction period local taxes supplied the greater amount of the school revenue.[6] In 1883 Texas turned over to the counties for educational purposes the public lands belonging to the state, and set aside capitation tax of one dollar, one-fourth of the occupational taxes and a property tax not exceeding 20 cents to secure a six months' term.[7] In Tennessee, because state support was abolished in 1869, the counties gradually resorted to local taxation.[8] In 1882 Mississippi provided for a three-mill county-tax to supplement appropriation from public funds to bring the school term of each county up to five months.[9]

[1] Barksdale *v.* Commissioners of Sampson Co., 93 N. C. See also Board of Ed. *v.* Commissioners of Bladen County, 111 N. C. 578.

[2] Collet *v.* Franklin, 145 N. C. 170.

[3] Keese *v.* Civil District Board of Ed., 6 Caldwell (Tenn.) 127; Schultes *v.* Eberly, 82 Ala. 242.

[4] Const. 1868, Art. IX; Const. 1885, Art. XII.

[5] Const., Art. XIV.

[6] In Arkansas, however, the policy of the Supreme Court toward local taxation was restrictive. See Union Co. *v.* Robeson, 27 Ark. 116; and 32 Ark. 496.

[7] Constitution of Texas, Amendment, 1883.

[8] MSS., U. S. Bureau of Ed. [9] *Ibid.*

Apathy toward moral causes cannot forever prevail in a democracy. Obstruction of popular interests, whether legal, administrative, or political, in the end runs its course. In the South during the decade from 1890 to 1900 a number of influences appeared which proved to be the incentive for a general educational movement. One of these was the increase of wealth, more than 46 per cent. Here was a substantial basis for an increase of school revenues, both state and local. Also with the increase of wealth came a new and prosperous middle class, full of intellectual ambition. Another influence was the awakening of a class consciousness among the rural population, best represented by the Farmers' Alliance. While the cause of the agrarian movement was economic, it frequently drifted to the question of education. Witness for example a resolution of the Alliance in Shelby County, Alabama. "We insist upon the necessity of educating the masses of the people, believing that the uneducated are always at the mercy of the better informed, and we insist that the brotherhood should take more interest in the cause of education, so that by means of their own they secure to their children the blessings of education."[1] In 1890 the Alliance element dominated the Democratic state convention in Alabama and the platform demanded a revision of the educational system.

Also by 1890 a new generation of leaders had arisen whose outlook was toward the future rather than the suffering and traditions of the past. Typical of the sentiment of many of these was a statement by the chairman of a school board in Arkansas: "It is most singular that the subject of education is not receiving from public officials of the state and candidates for office that consideration its importance demands. On the other hand, it seems to have been a favorite diversion to boast of our free school system, to advise the masses that we are in the lead, that the public fund for school purposes now being collected is ample, and that any one who would advise to the contrary is a public enemy. Such boasts can be actuated only by the purest demagoguery or igno-

[1] Quoted by Jno. G. Harris, in "Address to the People of Alabama." (Annual Report U. S. Com. of Ed., 1892–1893, Vol. II, p. 1635.)

rance. The facts are to the contrary. We have nothing to boast of, but the opportunity for the greatest development and educational prosperity is with us." [1] It is also very significant that state superintendents of education, notably in Mississippi, Georgia, Louisiana, Arkansas and North Carolina, in the early nineties were very outspoken on the matter of larger appropriations.

Economic discontent and dissatisfaction with existing leadership led to political revolt. A number of small parties sprang up. Some of them, notably the Union Labor Party in Arkansas and the Young Men's Democracy in Louisiana, demanded better educational opportunities.[2] By 1892 the Peoples Party had supplanted all other third parties and was well organized in every Southern state except South Carolina, and there the populistic element within the party secured control of the Democratic organization. Tradition has identified the new party and the minor organizations which preceded it with economic vagaries, but the historian of the future will doubtless regard it as a movement of liberation. In one state at least, North Carolina, its influence contributed to the advance of public education, for the superintendent of public instruction elected on a Republican-Populist ticket in 1896 led an agitation for better schools that resulted in a new local tax law.[3]

On account of the influences mentioned it became common throughout the South for all parties to pledge themselves to the cause of public schools. Yet, by one of those strange fatalities of history, the strongest of all influences for educational progress was the very one which during and just after the Reconstruction period undoubtedly checked the cause. That was the race issue. The movement to eliminate the negro as a factor in politics involved an appeal to passion, to prejudice, and sometimes a misrepresentation of the part of the colored man in Southern progress.

[1] W. H. Arnold of Texarkana; quoted from Weeks, "History of Public Education in Arkansas," p. 77.

[2] "Annual Cyclopedia," 1888, *passim*.

[3] Laws, 1897, Ch. 421.

Yet the only permanent method by which negro suffrage could be restricted was by placing a premium on that factor which in the long run is the strongest antidote to racial conflict; an educational qualification for voting, applicable ultimately to both races. Hence in the constitutions which disfranchised the negro advanced ground was taken in the matter of public schools. In the Mississippi constitution of 1890 special taxes were required to supplement the existing revenue to bring the school term up to four months.[1] The South Carolina constitution of 1895 raised the state tax for education from two to three mills to be supplemented by a general levy to make the school revenue $3 for each child enrolled.[2] The constitution of Louisiana adopted in 1898 returned to the educational revenue the interest on lands squandered during the Reconstruction period and gave the people the right to tax themselves locally for educational purposes to an amount equal to the state tax.[3] The Alabama constitution of 1901 provided for a state educational tax of 30 cents on the hundred dollars and authorized local taxation of ten cents.[4] In North Carolina the Democratic party pledged itself into a policy of local taxation in the campaign of 1898, which overthrew the Populist-Republican régime.

Evidently a new era in public education opened in the South about the year 1900. There was, however, a need for an active educational propaganda, independent of political influences, that would permeate all sections and lead the people to take advantage of the educational provisions in the new constitutions, and so create an educational ideal that knew no state boundaries or partisan limitations. Such a work was undertaken by the Southern Education Board, established in 1901 at the instance of the Conference for Education in the South and supported financially by the General Education Board.[5] In 1903 an educational campaign

[1] Const., Art. 8.
[2] Const., Art. XI.
[3] Const. Art. 254, 257.
[4] Const., Art. XIV.
[5] Rose, "The Educational Movement in the South" (Report U. S. Com. of Ed., 1903, Vol. I). The Conference for Education in the South began as a conference for Christian Education in the South in 1898. At the second meeting its scope was enlarged and its name changed. Its great work has been as a clearing house for educational ideas and experience.

was opened in Virginia to increase the appropriations for schools, to bring about better administration, and to correlate the schools with the life of the people. Similar campaigns were instituted in North Carolina in 1902, in Tennessee and Georgia in 1904, South Carolina, Alabama, and Mississippi in 1905, Arkansas and Florida in 1908. These campaigns lasted from one to five years. How effective the results have been statistics show. In 1900 the total school revenue for these nine states was $12,004,785; in 1909, when the campaigns had closed, it was $25,790,182, an increase of more than 100 per cent. To this educational awakening was due in some degree the decline of illiteracy from 27 per cent in 1900 to 18 per cent in 1910, as well as an increase of the school term from 96.9 days to 121.7 days in the same decade. Further increase of revenue through local taxation and agitation of better schools are kept before the people by state supervisors of rural schools, appointed by the state departments of education and paid by the Southern Education Board and the Peabody Fund.[1]

The fact of most importance for the future is the movement to correlate the schools with the industrial life of the people. In 1900 manual training was practically unknown in the city schools; to-day it is very common. In Georgia and North Carolina agricultural high schools have been established. In 1907 corn clubs were organized among the schools of Holmes County, Mississippi; in 1912, 100,000 boys in the South were enrolled in such clubs. In 1910 tomato clubs were started among the girls of South Carolina and in 1912, 30,000 girls were enrolled throughout the South. So long as the common schools are identified with the industrial life of the people, opposition to their growth will never be effective.

II

Changes in Higher Education

In the history of public education there is a certain continuity, for schools supported by taxation are an expression of the organic life of the people, directly affected by general political and economic

[1] Annual Report U. S. Com. of Ed., 1912, Vol. I, p. 189.

influences. Not so with higher education. Colleges and universities by their very nature are more heterogeneous in their equipment and standards, and less responsive to public opinion. Moreover, in the South there has been a sharp cleavage between institutions founded by the church and those established by the state. Also since 1870 two new types of college have arisen, the agricultural and mechanical and the normal colleges. Hence higher education has been notable for conflict of aims, lack of coöperation, and intensity of prejudice on the part of the institutions and their constituents. These facts confuse the historical perspective; yet among the distinctive phenomena of Southern development during the past forty years have been three movements in higher education which promise more for the future than they have accomplished in the past.

First of these has been the establishment of standards for admission, a task that cannot be comprehended without recalling the conditions confronting Southern colleges at the close of the war. Most of the ante-bellum academies and classical schools which had prepared students for college had collapsed, and public high schools were a thing undreamed of. College endowments had shrunken or had been lost, and tuition fees were the principal source of college revenue. Moreover, there was a sense of haste, a feeling that the time for training for life's duties was very short, on the part of those seeking an education. It is not surprising, therefore, to find that adequate preparation for college was well-nigh impossible except among the wealthy, and that the colleges themselves lowered their standards to meet actual conditions. A teacher of wide reputation who worked for years in a small Southern college has left the following description of the situation about the year 1880:

"The preparatory schools which had been private property, the surplus capital generally of men of fortune, went in most cases along with the Confederate bonds, without redemption or restitution. The few that remain are crippled in resources; the means do not exist for the establishment of new ones. Thus our Southern states are almost wholly without secondary schools. The few good fitting schools that exist are private

property and must be made to yield a fair profit, and hence they are expensive. The people are poor, few can avail themselves of these fitting schools, and the most of those who do use them rather as a substitute than as a preparation for college. By far the larger number of students come to college from the public schools, not from the academies; oftener still from the shop or the counting house where they have been trying to save a little money to go to college only for a year or two. . . .

"And if these things are so, 'what are we going to do about them?' It is easy to say, 'put up your standards, and reject all that do not come up to them.' But that is easier said than done. What would come of the rejected? If sent away from the college they are either remanded to schools which do not exist, or else to a few schools so expensive and so remote from their homes that they cannot attend them. If not in the college, then nowhere can the great majority of Southern youth get even the elements of a liberal education. Moreover a Southern college which should refuse admission to all applicants not fully prepared would so limit its numbers as to restrict greatly both its usefulness and its reputation, and there are few colleges that can afford — or even dare — to make this sacrifice on an ideal shrine. I see no remedy except in time." [1]

The remedial time referred to came in the decade of the nineties. A few institutions had adopted standards for admission; a number of private schools and academies had been established and were prospering, especially in Tennessee and Virginia; and that general discontent with educational conditions which influenced the movement for public schools also reached the colleges. The result was the beginning of standardization. In 1895, through the initiative of Vanderbilt University, the Southern Association of Colleges and Preparatory Schools was organized with a membership of six institutions. By 1906 eighteen colleges and thirty-five schools were enrolled and entrance requirements of ten units had been established. The Methodist Episcopal Church South in 1898 established an educational commission to formulate entrance requirements and to classify the colleges under its control. By far the greatest agency in standardization has been the Carnegie Foundation for the Advancement of Teaching. Its report on standards of admission, made in 1907, brought home to college authorities and the public existing conditions, the lack

[1] Edward Joynes, quoted by C. F. Smith, *Atlantic Monthly*. Dec., 1885, p. 740.

of uniformity in entrance requirements, the leadership in the matter by some small colleges, and the laggardness of some large ones. The Carnegie investigation was particularly timely; it came in the midst of a campaign for public high schools throughout the South. In 1906, just prior to its report, the number of colleges with fourteen or fifteen units for admission was eight; in 1912, 160 announced such requirements as in force or in process of application.[1] The process of standardization has been aided by a system of high school inspection, notably in Virginia and North Carolina, and by the Southern Association of College Women.[2] In 1913 the General Assembly of the Presbyterian Church referred to a committee the matter of classification of the colleges affiliated with it.

Higher standards of work cannot be maintained without larger material equipment. Here marked progress has been made in the last decade. Prior to 1900 Tulane and Vanderbilt Universities had been founded with endowments of more than $1,000,000 each, the University of Texas, the largest of the state universities, had been launched, and a few notable donations to small colleges had been made. A general movement toward the increase of equipment was inaugurated by the General Educational Board which has appropriated to the colleges in the eleven strictly Southern states $2,502,500 on condition that $7,912,500 be raised by the colleges themselves. Of the total $10,415,000 thus realized, the sum of $8,020,000 has been applied to endowments, $2,120,000 to buildings, $115,000 to lands, and $160,000 to the payment of debts.[3] Other endowments are constantly being raised without the aid of any educational foundation, especially by the smaller colleges for women. The appropriations to the state universi-

[1] Colton, "Improvement in Standards of Southern Colleges since 1900" (Proceedings of the Second Annual Meeting of Southern Association of College Women).

[2] Colton, "Standards of Southern Colleges for Women" (School Review, Vol. XX, No. 7).

[3] The table on page 276 shows in detail the work of the General Education Board to January, 1914. I am indebted to Mr. Wallace Buttrick, secretary of the board, for these figures: —

	Conditional Gift	Supplemental Sum to be Raised	To be Applied to			
			Endowment	Buildings	Land	Payment of Debts
Virginia — $250,000						
Emory and Henry College, Emory	50,000	200,000	100,000	150,000		
Randolph-Macon College, Ashland	60,000	130,000	190,000			
Randolph-Macon Woman's Col., Lynchburg	75,000	175,000	170,000	80,000		
Richmond College, Richmond	150,000	350,000	400,000	100,000		
Univ. of Va., Charlottesville	50,000	950,000	1,000,000	(Curry Sch. of Ed.)		
Washington & Lee, Lexington	5,000	45,000	50,000			
North Carolina — $387,500						
Davidson College, Davidson	75,000	225,000	225,000	75,000		
Meredith College, Raleigh	50,000	100,000	100,000	50,000		
Salem Acad. & Coll., Winston-Salem	75,000	225,000	200,000	100,000		
Trinity College, Durham	150,000	850,000	600,000	400,000		
Wake Forest Coll., Wake Forest	37,500	112,500	150,000			
South Carolina — $125,000						
Converse College, Spartanburg	50,000	100,000	115,000	35,000		
Furman Univ., Greenville	50,000	250,000	250,000	50,000		
Wofford College, Spartanburg	25,000	100,000	125,000			
Georgia — $275,000						
Agnes Scott Coll., Decatur	100,000	250,000	175,000	100,000	15,000	60,000
Mercer Univ., Macon	75,000	225,000	240,000	60,000		
Wesleyan Female Coll., Macon	100,000	200,000	200,000	100,000		
Alabama — $25,000						
Howard College, Birmingham	25,000	75,000	100,000			
Mississippi — $150,000						
Millsaps College, Jackson	25,000	75,000	100,000			
Mississippi Coll., Clinton	125,000	275,000	350,000	50,000		
Arkansas — $75,000						
Hendrix College, Conway	75,000	225,000	300,000			
Tennessee — $625,000						
Geo. Peabody Coll., Nashville	250,000	750,000	1,000,000			
Maryville Coll., Maryville	50,000	150,000	130,000	70,000		
Union Univ., Jackson	25,000	75,000	100,000			
Univ. of Chattanooga, Chattanooga	150,000	350,000	300,000	200,000		
Vanderbilt Univ., Nashville	150,000	150,000	300,000			
Texas — $400,000						
Baylor Univ., Waco	200,000	400,000	400,000		100,000	100,000
Sou. Meth. Univ., Dallas	200,000	800,000	500,000	500,000		
Florida — $50,000						
John B. Stetson Univ., De Land	50,000	100,000	150,000			
Totals	2,502,500	7,912,500	8,020,000	2,120,000	115,000	160,000

ties for current expenses have also increased, the amount in 1900 being $297,980, in 1912 $1,060,008.

By far the most important asset of the modern Southern college has been an attitude of mind, an indefinable quality of character which we may call a spiritual temper. The shrinkage of wealth after the war gave the college student a seriousness of purpose; it also called forth a sense of moral responsibility on the part of the teacher. These things cannot be measured by statistics or by financial standards. Their reality may be visualized by a number of incidents taken from life at different institutions. Fanciful but true to experience are the words of a Southern college president to his students after a return from a trip to the North where he was offered a pastorate at a much higher salary than he was receiving, as reported in the autobiography of a Southerner:

"'But gentlemen,' and tears came into his eyes as he addressed the table of students who fifteen minutes before had been in a convivial mood, 'I told them that our own land now needed every son she had left. One generation of southern men lies slain in war. We who must train the next generation would be cowardly to desert them. Our land has need of you, every one, to make its future glorious as our fathers made the past.' . . .

"That very night those of us whose patriotic feeling ran high, swore an oath, kneeling with our hands clasped, to give our lives to our country's service: and that was the beginning of a little patriotic club that has existed in the College ever since." [1]

Such a spirit pervading a number of institutions created a few strong personalities among college executives. Such was the president of a small college in South Carolina. One of his students, stranded in a distant western city, walked up to the desk of a hotel, told his circumstances, and whence he came. Said the clerk, "If you are from South Carolina, who is the greatest man in your state?" The reply was, "Dr. Carlisle, President of Wofford." In a few minutes the hotel had a new guest on extended credit. No less striking has been the general character of the Southern college student. Wrote one in 1885 who had had

[1] "Autobiography of a Southerner," Chapter II.

experience in both Northern and Southern colleges, after consultation with others: "The spirit of earnestness and work on the part of the students is incomparably greater than before the war. A different aim is before the majority of our young men, and to most of them education means working capital rather than ornamental polish."

This seriousness of purpose on the part of students and executives has given a new conception of the college as a contributor to the progress of society. Said the president of a small college in a report made in 1888:

> "The college of to-day in America must be a place where a courageous independence of thought is fostered side by side with an ardent love for truth and righteousness. There is no phase of civic, social, political, and industrial life that it must not study so as to be able to show the true relation of every tendency to those higher interests, the moral and spiritual good of society.
>
> "Not only must the college be the leader in the intellectual life of society, but it must be the mother of reforms. The college of to-day may often have to defy the public on new questions, but it must bravely yet sympathetically instruct the people. It must fight against prejudice wisely. It must undermine that conservatism that never learns anything or never does anything. It must curb the fast spirit of the times that takes no account of the past. It must stand like a wall against a too one-sided development of society in any aspect whatever. It must have in it the eyes of prophets who foresee dangers and have the moral courage to forewarn us of them. While it must not truckle to the whims of its own generation, still it must be as responsive to the real needs of the present age as a mother is to the needs of her child.
>
> "Now no man is fit to be in a college chair, where thinking is a business, who does not leave his generation richer, either in the amount of knowledge or in the application of knowledge to human needs, than it was when he found it. Productiveness, then, is a criterion of fitness for this pursuit." [1]

Such a conception of the function of a college is radically modern; but it reflects a wide-spread feeling that learning should be brought into contact with the problems of life beyond academic halls. Two manifestations of this are very apparent. There

[1] Report of John F. Crowell, President of Trinity College, 1888.

has been a ready response to the aims and methods of that professional scholarship which has revolutionized higher education in the United States since 1870. The specialized teacher has supplanted the clergy and the men of the *belles lettres* type that monopolized professorships before the war. Technical publications have been established by departments and clubs in various institutions. Through the leadership of the departments of history at the University of Texas and the University of Mississippi, two state historical societies have arisen whose publications rank with the best of their kind in this country. For the more popular discussion of literary and social questions, the faculty of the University of the South established the *Sewanee Review* and a group of teachers and students at Trinity College founded the *South Atlantic Quarterly*.[1]

The second manifestation of the movement to correlate higher education with the larger currents of life has been the rise of new types of colleges. The agricultural and mechanical institutions, whose organization was made possible by the Morrill Act of 1862, illustrate the response to the industrial transformation. As state institutions it would be logical for them to be affiliated with the state universities but, with five exceptions, they are under independent boards of control and are at sites some distance from the universities, a lasting evidence of a revolt from the cultural, aristocratic conception of college education that prevailed in the past. Recently the state universities and also the private colleges have shown a greater interest in the rise of industries by increasing their scientific equipment. Practical, vocational aims will influence college education in the future more than in the past.

A similar response to the needs of a new social order led to the foundation of normal colleges to train teachers for the new public

[1] Note also the James Sprunt Historical Publication, the Journal of the Elisha Mitchell Scientific Society, and the Publication of the Philological Society of the University of North Carolina, the John P. Branch Historical Papers of Randolph-Macon College, the Papers of the Trinity College Historical Society and its John Lawson Monographs, and the Bulletins of the University of South Carolina and the University of Louisiana.

school systems. The earliest type of these was the summer normal or institute introduced by the Peabody Fund and supported by it in coöperation with the states. Gradually permanent institutions have been established, Alabama leading the way in 1873, Texas adopting the policy in 1879, Louisiana, Virginia, and Mississippi in 1884, South Carolina in 1886, Georgia and Florida in 1887, and North Carolina in 1891.[1] These institutions, perhaps more than the industrial colleges, are of epochal significance. There was no federal law to stimulate their organization. In securing their charters opposition by conservative forces was often severe. This was notably true in the Carolinas. Winthrop Normal and Industrial College owes its origin to the political revolution in South Carolina led by Benjamin R. Tillman, and the Farmers' Alliance was one of the chief factors in procuring the charter of the State Normal and Industrial College of North Carolina. However, the expansion of public school systems during the past twenty years has effectively put to rest the conservative attitude towards separate colleges for the training of teachers. Since 1900, correlation with the cause of popular education has been a distinct feature of the academic colleges. To this the General Education Board has contributed by establishing professorships of secondary education in the state universities. The Trustees of the Peabody Fund, in dissolving the trust, have apportioned most of the principal among the State Universities for departments of education and the George Peabody College for Teachers, at Nashville, Tenn. Some of the denominational colleges have added to their curricula the study of educational problems.

Undoubtedly the cause of higher education in the South offers a large opportunity for service. Professional scholarship has not the resources to be found elsewhere, but who can foretell the harvest from seeds of knowledge scattered in the soil of a new social and industrial régime? Deficiencies in equipment are

[1] It is interesting to note that normal schools for negroes were established before similar institutions for whites in Virginia, North Carolina, Alabama, Arkansas, and Texas. Also the normal colleges in South Carolina and Virginia are limited to women.

offset to a degree by the opportunity of rendering practical service to the public. Sentiment among the Southern people is rapidly turning to questions allied with the social and natural sciences, such as child labor, taxation, municipal government, sanitation, better insurance laws, good roads, and local history. As a large leisure class which takes the leadership in the discussion of these matters elsewhere does not exist, opportunities for the college instructor to be heard beyond academic walls are always at hand. Moreover, the South lacks statesmanship in matters of higher education. Undoubtedly the greatest clog to intellectual progress is the need of an educational ideal which will conceive of all educational processes as a unity, and so forever end the wasteful antagonism between the state and the denominational colleges, as well as the lack of coöperation among the state institutions themselves. Not till then will helpfulness to society be exalted above selfishness and dogma, political as well as ecclesiastical.

III

The Education of the Negro

The educational task of the South has been deeply influenced at every stage and in every phase by racial conditions. The presence of the negro is to-day responsible for 62 per cent of the illiteracy. The question of mixed schools was a stumbling block in the inauguration of public education during the reconstruction period. After the victory of home rule, the fact that the colored child as well as the white was to be provided for by taxation explains much of the apathy toward the cause of common schools. The matter of apportioning funds between the races according to the revenue paid by each was raised during the recent campaigns for local taxation. Racial stress together with the bitter experience of Reconstruction tended to make the Southern white man sensitive; his attitude toward life and thought beyond his section has too often been unresponsive, and such a state of mind can hardly be regarded as favorable to a vigorous intellectual life. These conditions warrant a more optimistic interpretation of the

advance in education than the bare facts would otherwise suggest. And nothing justifies that optimism more than the progress of the negro race itself, for after all conflicting views of the negro's capacity have been heard, it remains unquestionable that negro illiteracy has declined from 70 per cent in the population of school age in 1880 to 27 per cent in 1912. What are the means by which this result has been accomplished?

For some years after 1865 the education of the negro was wellnigh monopolized by the Freedmen's Bureau and the missions sustained by the Northern churches and organizations allied with them. Schools of all grades from the kindergarten to the college were established in each state. The Freedmen's Bureau alone appropriated $3,521,934 to schools from 1868 to 1870, while the churches and societies spent $1,572,287 during the same period.[1] Among the northern teachers were many men and women of unusual sincerity of purpose, zealous as only religious enthusiasts can be. The negro was also responsive to efforts in his behalf as far as his economic conditions would permit. But for a number of reasons the intellectual regeneration of the race by agencies from without has not been as effective as the pioneers of the cause hoped. Many of the missionaries had more earnestness than training for their work. They knew little of the delicate relations that exist between a lordly and a servile race, and hence with the coming of the Northern teacher the Southern white man and woman, with a few exceptions, retired from the field of negro education. The introduction of the Northern negro church also brought about almost a complete severance of the religious affiliations between the Southern whites and the negro. Thus the colored man lost the guidance and also the sympathy of that class of whites who knew him best. Moreover, training all the colored children of the South was too large a task for philanthropy, while the cause lost much when the schools of the Freedmen's Bureau were suspended in 1870.

However, philanthropy has done much service. The schools it has established have been especially useful in those states in

[1] Curry, "Education of the Negro since 1860" (Slater Fund Papers).

which the negro shares poorly in the public school system. It has set an example for the negro to help himself, the amount raised each year by the negroes for denominational schools approximating $1,000,000.[1] The negro universities of the South are also the offspring of Northern philanthropy. The success of these institutions has been seriously limited by economic conditions, poor preparatory training, and the lack of a tradition of culture among their students. Thus an investigation made in 1913 showed that in 22 negro universities only 945 students were in the college departments, while 256 were in theology, 129 in law, 1020 in medicine, 660 in normal courses, 2529 in high school, and 3471 in elementary grades.[2] Endowments are meager, only one institution having as much as $100,000 of productive funds. Perhaps the most helpful philanthropy in negro education has been the Slater Fund, consisting of $1,000,000 bequeathed by John F. Slater of Norwich, Conn. The trustees of the Fund, acting along lines laid down by Dr. Atticus G. Haygood of Georgia, its first agent, adopted the policy of aiding the industrial and normal departments of existing schools instead of founding a new institution, the annual disbursements for thirty years ranging from $30,000 to $60,000.[3]

Gradually the burden of educating the negro has been assumed by the Southern people. In each state there is an agricultural and mechanical college for negroes supported by state and federal revenues, and throughout the South there are state normal schools for the race. The greatest part of the task is borne by the common schools systems, as statistics show. In 1880 the enrolment was 44 per cent of the school population, in 1890 it had risen to 53 per cent, in 1900 it was 57 per cent, and in 1910, 56 per cent. The rate of illiteracy in the meanwhile dropped from 70 per cent in 1880 to 27 per cent in 1912. These facts are truly remarkable when

[1] Negro Year Book, 1913, p. 187.

[2] Williams, W. T. B., "The Negro University" (Papers of the John F. Slater Fund).

[3] Through successful investments the principal of the Slater Fund has increased to $1,500,000.

the expenditure for negro schools is considered, the average expenditure for each child enrolled in 1912 being $2.51, as contrasted with an average expenditure for both races of $6.48. Also the length of the negro school term is, with the exception of one state, less than that of the schools for whites.[1] It is at this point that a most perplexing question arises. For years many of the friends of the negro, as well as those who oppose his receiving a larger share of the common school funds, have maintained that the greater part of the revenue for colored schools has come from the taxes paid by the white man. However this may have been for a generation after the war, during the past two decades the negro has rapidly been acquiring property; and an examination of his tax returns, the fines and fees he pays to the courts, and his proportionate share of corporation revenues indicate a different conclusion. Superintendent J. Y. Joyner writes on this question as it pertains to North Carolina:

"The negroes, therefore, constitute about 32 per cent of the school population and receive in the apportionment for same purpose less than 17 per cent of the school money. This report shows that the negroes paid for schools in taxes on their property and polls about $163,417,89, or nearly one-half of all that they receive for school purposes. Add to this their just share of fines, forfeitures, and penalties, and their share of the large school tax paid by corporations to which they are entitled under the constitution by every dictate of reason, and it will be apparent that the part of the taxes actually paid by individual white men for the education of the negro is so small that the man that would begrudge it or complain about it ought to be ashamed of himself." [2]

Some analyses of the available statistics indicate more than Mr. Joyner claims, even that the negro bears the expense of all the education which he receives from the public schools, and that

[1] Weber (Proceedings Nat. Ed. Assoc., 1910, p. 234) makes Virginia the only state in which expenditures per child for each race are equal. Since the date of his investigations North Carolina enacted a six months' school law which is lengthening the negro school term.

[2] Biennial Report Sup. of Pub. Instr., 1908–1910, p. 55.

occasionally he also shares the educational burden of the whites.[1] However, it is as yet impossible to arrive at a final conclusion concerning the cost of negro public schools and the amount of that cost borne by the negro, for the necessary statistics are not available for every state, and the conditions in each state often vary from county to county.

All hope for the progress of the negro common school depends on the initiative of the negro himself. Given an irregular attendance, a scarcity of well-trained teachers, and a lack of civic pride, and the schools of any race will suffer, for the local school boards usually apportion the school revenues according to attendance, the qualification of teachers, and the demands of the patronage. On the other hand regularity of attendance, well-trained teachers, and an interest in the school by the colored public, district by district, will soon work a transformation. An example of this truth is shown by the following incident told by a negro educator:

"And almost invariably whenever the colored people come with substantial contributions towards the betterment of their schools, the school officials and white citizens have met them with extra appropriations and helpful contributions. At Harrisonburg in Virginia, for example, the colored people have raised some $400 for their school during the last two years. The city has increased the number of teachers from three to five, and is now erecting a $10,000 schoolhouse for the colored people. In Cumberland County, Virginia, the school board adjourned their meeting to attend an exhibition of a colored school that had been doing some industrial work. So pleased were they that they offered two weeks extra to every colored school in the county that would raise the money to run two more weeks. Eighteen out of twenty schools qualified, and secured thereby an extra month of schooling for their people."[2]

The awakening of a community like this is almost invariably the work of an intelligent and zealous graduate of a negro college

[1] Coon, "Public Education and Negro Schools" (Twelfth Conference for Education in the South, pp. 157–167); Dubois, "The Negro Common School" (Atlanta University Publications).

[2] W. T. Williams, "The Outlook in Negro Education" (*Southern Workman*, Nov., 1911).

or industrial school. An organized movement to employ such men in such a mission has been made possible by the Jeanes Fund of $1,000,000, bequeathed in 1907 to the cause of negro rural education by Miss Anna T. Jeanes of Philadelphia. The trustees have adopted the policy of employing industrial supervisors of education for various counties in the South, whose duties are to awaken an interest in the schools and industrial life. Some results thus far accomplished by this plan and its possibilities for the future are shown in the report of the county superintendent of Tallapoosa County, Alabama.

"After mapping out his line of work, Edwards (the industrial supervisor) commenced visiting the colored schools in the county, making weekly reports to me, and getting further directions for each ensuing week. He commenced at once to organize in each colored school, a school improvement association, coöperative corn and cotton clubs, where the school children and patrons cultivated the grounds, taking lessons in agriculture at the same time. It was agreed that the proceeds arising from this work should inure to the benefit of the school, in adding equipment, extending the length of the school term, and introducing manual labor, both for girls and boys.

"Edwards has kept me posted as to his work, and it is simply wonderful how much he has accomplished in so short a time. I have visited several of these schools in person, and the improvement is most striking. The school yards have been cleared off and planted in trees and flowers, corn and cotton clubs organized, and work done on the little farms, and manual art and domestic science introduced into most of the schools, etc. . . .

"This general interest, brought about by special contact and community coöperation, has resulted in lengthening school terms from two to three months and the organization of the Tallapoosa County Fair . . . at which premiums are offered to encourage manual art in schools and to increase agricultural production by colored farmers."[1]

In such work as that here described the Jeanes Fund employed 119 supervisors and 5 special teachers in 121 counties of the South in 1912. Many statistics are burdensome, but the following, which show results in one state, are truly eloquent:

[1] J. P. Oliver, quoted in Annual Report, U. S. Comr. of Ed., 1912, Vol. I, p. 247.

"For the session 1912, 23 supervising industrial teachers worked in the colored schools of 25 counties. Of the 591 Negro schools in these counties, 417 were visited regularly, and a total of 2853 visits were made by the 23 supervising industrial teachers. One hundred and eighty-nine schools extended the term an average of one month. Twenty new buildings were erected, costing $23,008 and 15 buildings were enlarged at a cost of $2213.09. Forty-six buildings were painted and 81 whitewashed and 102 sanitary outhouses were built. Three hundred and seventeen schools used individual drinking cups. The 428 improvement leagues raised in cash for new buildings, extending terms, equipment, and improvements, $22,655.80. This does not include labor or materials given. The whole cost of salaries and expenses of the supervising teachers was less than $10,000 so that as a result of their efforts they have brought into the school funds of the state more than twice the amount expended. It is impossible to estimate the value of this supervision as expressed in the practical nature of the school work and the spirit of coöperation among all classes, which has been brought about in these counties."[1]

Such coöperative efforts on the part of the negroes, state by state, county by county, will quicken life. It will also awaken in the Southern white man the duty of a more equitable apportionment of the public school fund.

[1] Jackson Davis, "Practical Training in Negro Rural Schools" (*Southern Workman*, Dec., 1913). The quotation refers to Virginia.

XII

THE NEW SOUTH, ECONOMIC AND SOCIAL

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XII

THE NEW SOUTH, ECONOMIC AND SOCIAL

Much nonsense has been written of the new South, perhaps because so much that is foolish has been written of the old South. When the student of history strives to reconstruct the ante-bellum scene, he finds among the great though undigested mass of material little that he can trust, for if the Southern habit of mind was oratorical, that of the Northern observer was likely to be provincial or pharisaical. Few writers were accurate, and fewer placed facts in their proper relations.

Men wrote, and continue to write, of the South as if it were one country. They have written, and do write, of "Southern opinion," of the "Southern position," and of "Southern economic conditions" as if they were discussing a family or even an individual. Their generalizations have been almost invariably untrue, for the South, whether considered as the states which held slaves in 1861 or as the seceding states, is a large territory including a great variety of soil, elevation, and climate. Natural barriers shut off section from section, and state lines cross as often as they follow these barriers. Different parts of the same state differ widely physically.

The South was settled by men widely different in social status, religious belief, standards, ideas, and capacities. English gentlemen, yeomen, vagrants and criminals, North of Ireland Presbyterians (the so-called Scotch-Irish), Irish Catholics, Scotch Highlanders, French Huguenots, French Catholics of all ranks, Swiss, Swedes, Germans, Austrians (Moravians), and Spaniards. Then there were negroes from the Guinea coast belonging to many tribes, negroes from Senegal with a strong infusion of Arab blood, and negroes from the interior of Africa.[1]

[1] The African ancestry of the American negroes has not yet been carefully studied. See, however, Sir H. H. Johnston, "The Negro in the New World"; J. A. Tillinghast, "The Negro in Africa and America"; and Jerome Dowd, "The Negro Races."

Generally, the whites, drawn together by ties of blood and religion, settled in communities which were, in some cases, close corporations into which an outsider was not welcome, and this isolation endured for a long time. During the Civil War whole companies of "Macs" were enlisted in the Scotch counties of North Carolina; within the past twenty-five years the use of the German language as a means of ordinary communication has died out in some of the Piedmont counties of the same state; descendants of the French and Spanish settlers in the Gulf states are yet a "peculiar people." The Scotch-Irish and the Germans followed parallel lines on their journey from Pennsylvania to the Piedmont, and in some sections a sensitive observer will discover real differences in idiom, diet, and attitude of mind, on different sides of a stream or a range of hills.

There were also differences in economic status. Some men owned many slaves; some, none. There were nearly a half million free negroes in 1861. The great majority of the population, except free negroes, lived in the country though many of the great landowners had houses in town also. There were a few cities which were centers of culture, and where ordered elegance prevailed. There was a great stretch of raw frontier which has not yet disappeared, a fact that has never been sufficiently emphasized.

All of this means that there were in 1861 many "Souths" and many "Southerners," who were with great difficulty brought into coöperation. What was true sixty years ago is true to-day. There is no single "South," there is no typical "Southerner." The divisions are not the same, and new elements have entered to complicate the problems. Only one section has remained unchanged. Except where the lumberman or the miner has pushed his way into the Appalachian South, two and a half million mountaineers are living much the same lives their fathers lived sixty years ago, and many as their ancestors did in the eighteenth century.[1]

[1] See Horace Kephart, "Our Southern Highlanders," and the writings of John Fox, Jr.

From an economic standpoint the new South began with the fall of the Confederacy. Many who had been rich or well-to-do found themselves penniless; those who had been poor were poorer than ever; those who had been chattels found themselves freemen. The whole economic organization was destroyed, and with the introduction of negro suffrage political power shifted. While in the long run the attitude of mind is profoundly influenced, if not governed, by economic considerations, a sudden change imposed from without is likely to emphasize conservatism of spirit. Men cling to the old, because it is old. It was so in the South. Men could not immediately adjust themselves to new conditions, and the only apparent change in attitude was increased bitterness. That acute, though often unfair, critic of Southern life, Albion W. Tourgée, speaking of the war, perfectly described the situation in a phrase. "It modified the form of society in the South, but not its essential attributes." [1] The indignities and hardships of Reconstruction intensified old prejudices, and created new ones. As a result many men of the older generation were unable to adjust themselves to the changed conditions, which were to create the new South.

While keeping in mind the difficulty of speaking for the whole South, we can still say that there is a new South, different in attitude, standards, and ideals. It is, however, an outgrowth of the old South and not a new and different civilization imposed from without. The changes have come gradually by the processes of time and the interaction of educational, social, and economic forces. These have done what bayonets could not do. Patronizing advice or denunciation from without has had on a proud people the effect which might naturally be expected. It has been resented, and we have heard much of "Southern sensitiveness and intolerance," but in matters she considered vital the South has never wavered, though at times it has seemed as if the world were against her. One of the most convincing indications of the new attitude is the fact that the South has begun to criticize herself and even to ridicule her own shortcomings.

[1] A. W. Tourgée, "An Appeal to Caesar."

Now let us trace some of the important changes. With the close of the war and the return of the armies the struggle for a livelihood began. The chief interest of the old South was agricultural and the population naturally turned to the land. In spite of all the difficulties growing out of the destruction of the old economic system somehow people lived, though hundreds of thousands of acres were thrown out of cultivation, and the valuation of the land fell from $2,879,492,615 in 1860 to $1,647,810,604 in 1870. Not until 1890, twenty-five years after the war closed, did the valuations of land reach those of 1860, and the total value of all property did not reach the valuations of 1860 until 1900.

In the old South there were three great divisions or groups in the white population; the large slaveholders, whose plantations were generally under the charge of overseers; the small slaveholders, who supervised their own laborers and in many cases worked in the fields with their slaves; and the non-slaveholders. Many of the third group were men of respectability and standing in their communities. Some had conscientious scruples against holding slaves, some did not own sufficient land to justify their employment, and some preferred not to lock up so much capital, but to hire their labor as needed. There were always slaves, the property of estates, in charge of the clerk of the court, who could be hired; in some communities there were also free negroes who could be employed. To such men as these the term "poor white" did not apply, and they formed the major part of many communities.

After the war few owners of large plantations could obtain capital to pay wages, even if conditions had permitted. The same was true, in less degree, of the second group. As a result, either the plantation was sold or a system of tenancy established which still exists. Tracts of convenient size are rented to tenants, white or colored, occasionally for a fixed money payment, but more often for a share of the crop. Some of these tenancies call for a fixed quantity of produce, more for a given proportion. Sometimes the tenant owns his live stock and tools, but often

they must be furnished by the employer, who also furnishes the tenant a cabin in which to live. Since few of the tenants can sustain themselves until the crop is sold, some one, either the landlord or a country merchant, must furnish them with food and other necessary supplies upon which to live. Naturally, since the landlord's stake is so great and the financial responsibility of the tenant so small, close supervision of the details of the work of the tenant must follow.

This is the tenant system, so characteristic of Southern agriculture. With it has developed the crop lien and the chattel mortgage, by which the tenant is able to mortgage his live stock and tools (if he owns any) and his growing or even his unplanted crops to guarantee his creditor against loss for the food and other supplies advanced.

Legal provisions which make leaving the land and abandoning the crop before it is gathered misdemeanors are attempts to enforce specific performance of the contracts. They are designed to prevent a tenant whose crop does not promise well, or who feels that he has secured advances equal to or greater than his share of the future crop from abandoning the land at a critical time, thereby causing the loss of the whole crop. Efforts on the part of the landlord to recover damages by civil process would be fruitless. Many small landowners must likewise obtain advances, and their condition is sometimes little superior to that of the tenant.

This system has been severely criticized and from many standpoints deservedly, but it is difficult to see, under conditions existing just after the war, what other system could have been substituted. The owner of the land had no money with which to pay wages, and could rarely get it on the security of his land. When he did obtain it, he often saw his crops go to ruin because at a critical time, the negro preferred to do something else, or to do nothing at all.

The great majority of negroes and some whites had neither stock, tools, nor money with which to pay rent, and could not, therefore, maintain themselves until a crop was gathered. Few

negroes cared to buy land, and where they did attempt to buy, sometimes made little effort to complete the purchase. Even in 1910, the negro owned less than 5 per cent of the land in the South.

The tenant is, to a great extent, in the power of the landlord, and unscrupulous individuals do take advantage of his ignorance to keep him in debt, by charging exorbitant prices for supplies, and by crediting him for the crop at lower prices than could be obtained in a free market. On the other hand, in a year of short crops, or when low prices prevail, the landlord may lose, even if the tenant has worked well, while the latter has at least had food and shelter. Where the tenant is lazy, careless, or unfortunate, the landlord is also likely to lose. So serious are the objections on both sides that there have been strong efforts to repeal the law in several states, but the obstacle has been the absence of a satisfactory substitute. Under the present system, the land is worked under some sort of supervision. The landlord gets some return for his land, the laborers live and the best of them make money.[1] Perhaps some form of rural credits may help to solve the problem.

The number of farms in the South has greatly increased since 1860. The census definition refers to operation rather than to ownership, and a tract of a thousand acres rented to a dozen tenants is reported as twelve farms. If the owner reserves a part which he works by his own labor or by hired labor, the tract is reported as thirteen farms. Nevertheless, the average acreage owned is lower. In 1860 there were in North Carolina 75,203 farms averaging 316.8 acres. In 1910 there were nearly twice this number operated by owners, and in addition more than a hundred thousand tracts operated by tenants or managers. The average size of all farms reported was 88 acres. The Louisiana farm of 536 acres in 1860 had shrunk to less than 87 acres in 1910.

[1] See M. B. Hammond, "The Cotton Industry," for a careful study of the tenant system in its relation to the production of cotton. Burkett and Poe's "Cotton" is also valuable and is newer. Some of the papers in Alfred Holt Stone's "American Race Problem" contain interesting material on the negro tenant, and some comparisons with Italians in the Yazoo Delta.

In this year the average size of farms in the South was 114.4 acres, compared with 143 acres in the North, 296.9 in the West, and an average of 138.1 for the United States as a whole.[1]

Evidently a striking change is indicated. While the number of very large plantations has not diminished, the number of large plantations is smaller. The South has become a land of small farms. In all three of the divisions classed as Southern, *i.e.* South Atlantic, East South Central, and West South Central, the largest number of farms is between twenty and forty-nine acres, and more than half are less than one hundred acres.

Of all the land 65 per cent is operated by owners and 7 per cent more by hired managers. Twenty-eight per cent, nearly all owned by whites, is operated by tenants.[2] Of this 28 per cent part is owned by retired farmers, part by business and professional men who have bought it as an investment, and a considerable part is made up of ante-bellum plantations to which the original families have managed to cling. Still other men, once small farmers, have added to their holdings.

Farming in the old South was, as a rule, wasteful and unscientific and continues so, but the improvement has been marked. The cotton crop has been tripled in spite of the boll weevil, though the yield per acre is small; the largest yields of corn ever reported have been made by the boys' corn clubs, a form of competition organized by the Knapps, father and son; apples from the South have won the highest prizes in pomological exhibitions; and Southern alfalfa and Southern cattle have won prizes in competition with the middle Western states. The agricultural colleges, the experimental farms supported by the state, the

[1] For the sake of convenience the census classification of states is here used though it is open to objection. The South means the old slaveholding territory with the omission of Missouri. The West is composed of the mountain and the Pacific states, while the North comprises the remainder. As a matter of fact, Maryland and Delaware, for our purposes, might be classed as middle Atlantic, while West Virginia is hardly Southern. Oklahoma and Missouri are difficult to classify.

[2] Owned and operated by whites 60.6 per cent; by colored persons 4.4 per cent. Managed by whites, 6.9 per cent; by colored, .1 per cent. Operated by white tenants, 20.5 per cent; by negro tenants, 7.5 per cent.

"farmers' institutes," the agricultural papers, all have had a part in producing better farming. The value of the legumes in improving the land has been vigorously preached by all these agencies and the cowpea is planted more and more.

New crops are being planted. Small fruits and early vegetables for the Northern markets are raised in increasing quantities, and land which was supposed to be almost worthless has been found to be admirably adapted to this purpose. Georgia is second only to California in the production of peaches, and Florida, undaunted by "freezes," continues the production of early vegetables and tropical fruits. Nut trees of various kinds are being cultivated, and the production of these special crops is increasing. The value of all crops in 1909 had increased 112 per cent in the South Atlantic states over 1899, and in the South as a whole 94.2 per cent over 1899 compared with an increase of 72 per cent in the North.

Farming has improved, but much of it is still unintelligent. The cotton yield could be greatly increased by more careful selection of seed, and the same is true of corn. The South does not produce enough corn and wheat for its needs. In 1909 the wheat acreage was more than one and one-third million acres less than in 1879, thirty years before, and but for the large production of Oklahoma the yield would have fallen far short instead of remaining nearly the same. In 1879 Georgia raised over 3,000,000 bushels, thirty years later hardly one-fourth as much. The crop in Alabama was less than one-thirteenth as large as in 1879. Millions of pounds of Western hay, corn, and wheat are brought into regions admirably suited to grass and grains, where the chief energy of the farmer is devoted to the raising of cotton or tobacco.

A recent bulletin of the United States Department of Agriculture says: "The Southern states at one time years ago produced large numbers of hogs and cured practically all the bacon necessary to feed the people. At the present time the same cannot be said of a single Southern state and of but few counties in any of these states." The department also declares that the Piedmont

South is the section best suited to the production of live stock and yet the value of live stock per acre is less in the South Atlantic states than in any other section. To be sure, the value doubled in the census decade, but the figures are still low. Therefore millions of pounds of pork are shipped into the South and if the rural population ate any considerable quantity of beef, the amount of that commodity imported would be largely increased. As it is, Western beef and butter are sold in every large town in the South.

For the production of cotton or tobacco rather than grain, the landlord and the country merchant are largely responsible. Where they have advanced supplies to the tenant or small farmer they often require the production of these crops which combine considerable value in small bulk, ready marketability, with improbability of total failure. Further, neither is of value until it is ripe. In some sections corn fields might be raided and half the crop eaten by the tenant or his neighbors or by cattle while the ears were still green. Wheat is not a tenant's crop. Only winter wheat is grown in the South and too many tenants move the first of January to make it a favorite crop. Then, too, with cotton and tobacco there is always a gambler's chance of large profits. The high prices of cotton during recent years have freed many farmers from debt, but there is no conservatism like that of the cultivator.

The prevalent idea that the old South was destitute of mechanical ability and that the only mechanics were slaves is erroneous. The Scotch-Irish, German, Swiss, and French Huguenot settlements contained many skilled workmen who handed down their crafts. Workers in wood and iron were scattered all through the South. They worked singly or in small groups for the most part, to satisfy a neighborhood demand, though an occasional manufacturer of vehicles, for example, had more than a local reputation. It is only within the last thirty years that the cheapness of the factory-made product has driven these workers out of business.

There were tanneries in every county and nearly all the foot-

wear was made by local cobblers or by the poorer white farmers themselves, for such a farmer in a sparsely settled district was necessarily a jack-of-all-trades just as in New England. In some sections considerable iron ore was smelted, and there were many potteries to supply the local demand. Cotton and wool were spun and woven on almost every farm. In 1810 Tench Coxe's semi-official estimate placed North Carolina ahead of Massachusetts in textile production,[1] and shortly afterwards small cotton and woolen mills were established here and there. There were twenty-five small mills in North Carolina in 1840 and thirty-nine in 1860, though this year only 11,000 bales of cotton were consumed. These mills and similar ones in other states manufactured, generally, coarse yarn which was woven on hand looms in the neighborhood, though some of the mills wove coarse cloth. Facilities for distributing the product were lacking and when the neighborhood demand was satisfied the mill shut down.

Some of these mills were destroyed during the war, and others were worn out in the service of the Confederacy and the industry languished. Here and there a new mill was built before 1880 and proved successful. In spite of dismal predictions of failure, the construction of mills in the South began in earnest about 1890, and for the next fifteen years assumed the proportions of a craze in some sections. Some Northern capital was invested, machinery houses took stock, and some Northern mills built branch establishments in the South, but the greater part of the capital came from the savings of the people or from the profits of earlier mills.

These profits were for a time enormous. Land was secured and buildings erected for a smaller proportion of the capital than was possible in New England, fuel was abundant and cheap, and where the local supply of cotton was sufficient, freights were saved. There were no restrictions on hours of labor or age of the workers, and operatives were drawn from the farms at low

[1] "Statement of Arts and Manufactures in the United States, 1810": North Carolina, $2,979,140; Massachusetts, $2,219,279.

wages. Taxes were low, and it seemed that for a time no mill could fail to be profitable whether well managed or not. To-day the mills of the South consume more cotton than those of the North, though the product is less valuable. The Southern mills are engaged for the most part upon coarse yarn and cloth which require less skill on the part of the operatives than the finer grades, though the production of finer yarns and cloth is steadily increasing.

North and South Carolina are now competitors for the second place in the industry in which Massachusetts of course holds first place. The first named has more mills, consumes more cotton and the value of the product is greater, but the second has more spindles. Georgia ranks fifth immediately after Rhode Island, and Alabama follows at a distance. There are mills in all the Southern states, but in no other is the consumption of cotton as much as 100,000 bales.[1]

The Southern cotton mill is no longer sure of profits, for some of the former advantages have disappeared with the growth of the industry and increased competition. Since much of the cotton must now be brought from a distance by rail, the freight rate is often greater than the water rate New England pays, and there is the added cost of shipping the product to market. Fuel is more expensive than formerly, though many mills are able to use hydro-electric power generated on the rivers. The farming population is more prosperous and no longer flocks so readily to the mills. Wages are rising toward the New England level, and, measured by purchasing power, almost if not quite reach it; for though the cost of food and shelter is rising, they are still low, compared with the older manufacturing districts.

Other factory industries have grown. There were in 1910 two hundred and thirty-six distinct lines of manufacturing pursued in the South, but a few staples made up 41 per cent of the output; these are, for the most part, raw materials for further processes. Lumber is the most valuable. The manufacture of tobacco is

[1] See M. T. Copeland, "The Cotton Industry in the United States," and Holland Thompson, "From Cotton Field to Cotton Mill."

important and likewise that of fertilizers; the furniture industry is growing and the residents of High Point, North Carolina, predict that their town is on the way to surpass Grand Rapids; Birmingham is increasing its production of iron and steel.

Not many years ago the legislature of North Carolina passed, by request, an act forbidding ginners to dump cotton-seed into certain streams. If not thrown away, they were used as bedding or food for cattle. Now cotton oil, the cake from which it has been pressed, and the hulls are worth $150,000,000 a year. The cake enters largely into the manufacture of fertilizer and from this another profit is realized. The value of all manufactures is nearly a billion dollars more than the value of the crops. Of course, much of this value of the manufactures has already been counted in the raw material, but the increase in value by manufacture is large. This the South keeps instead of paying to other sections.

Most Southern manufacturers have not been trained to the business. The growth of manufacturing industries has been so rapid, that the second generation is not yet in charge of the plants. These manufacturers have come from various occupations, and have shown that managing ability is not so rare as had been supposed. Some few belong to the old landed aristocracy. They have adjusted themselves to new conditions and have helped to create new conditions. Some have come from the country store, some from the farm, and some are town bred. Among them are individuals of a type common in New England or in the British midlands a generation or two ago. These "Southern Yankees" are cold, shrewd, and selfish and need not fear any commercial contest. They are not interested in the "lost cause" and spend little time discussing the right of secession or the strategy of the battle of Gettysburg. They have found that money is power and sentiment is never allowed to interfere with profits.

Such men are not the usual type. More common is the man who retains and exhibits his interest in humanity. The personal element in Southern life is still strong and there is not yet an armed truce between capital and labor. It is common for the

active manager of a small factory — and most Southern factories are small — to be able to call by name every worker in his plant, and the workers naturally go to the employer for advice in times of perplexity and help in time of trouble.

These managers are individualists as are most Southerners. They recognize as factors in industry only the employer and the employed. They have not realized that any large establishment around which the chief interests of many employees center is quasi-public in its nature. Minute regulation of farm labor would seem absurd, and the idea that there is any essential difference between hiring five persons to work on a farm and a hundred to work in a factory is not yet a part of the social consciousness. Such employers have opposed legislative regulation of industry even when they would in no way be affected. Such regulation seems to them an unwarranted interference with personal rights.

The fact that the people still think in terms of agriculture and not of industry helps to explain the slowness in regulating conditions of employment. To fix the number of hours which a farmer and his family or his hired help may work in the harvest field, or to provide that cotton may be picked only by those who have attained a certain age would seem ridiculous, and the essential difference between work on a farm and in a factory has hardly yet been recognized. However, in every state in which manufacturing industry is important some regulatory acts have been passed. The idea that the best government is that which governs least is still strong, and good citizens have opposed compulsory education on this ground alone. The towns have grown by additions from the country, and for this reason there is often difficulty in enforcing sanitary ordinances. The idea that living in aggregations demands sacrifice of some individual liberties is slow of growth in the South.

With few exceptions the workers in these new industries are native born. To the furniture factories and machine shops they come individually, but to the textile mills by families. Their fathers were small farmers, sometimes owning the land they

worked, oftener renting. The motives which brought them from the farms are various. A succession of poor crops, sickness or disability of the father, loss of land, due to misfortune or inefficiency, the loneliness of the farm and a desire for a fuller social life, are some of the impelling forces. Some men reason that the children worked on the farm, as they have done since farming began and that indoor labor will be easier. Few fathers come with the deliberate intention of living upon the earnings of their children. The stories of $15 to $30 earned by a family in a single week seem almost incredible. Many small landowners do not handle as much as $200 in cash in a year, and they neglect to consider the value of the provisions produced and consumed upon the farms.

The children easily find employment, but the employment of the father is another matter. He may secure employment as a teamster or a truckman, but few laborers are needed around a mill, and his fingers are too clumsy to learn a new trade. Many cotton mills are in small towns, where the mill is the only industrial enterprise, and it is quite possible that the father may not find regular employment. Meanwhile the boys and girls are at work and their wages support the family. Though wages are as large as reported, the demands upon them are larger than in the country and the family rapidly raises its standard of living to the full extent the income allows. The younger children go to school, for there is a school in nearly every mill village, the term of which is often extended by an appropriation from the mill treasury. The marriage or the sickness of one of the workers causes a reduction of the family income, and one of the younger children leaves school to take the vacant place and seldom returns to the class room.

The manufacturers generally do not wish to employ children in the mills, but the pressure to admit them is steady and strong. Before the restrictive laws were passed many employers set themselves strongly against admitting children, but were often forced to yield or lose the services of a whole family, which would threaten to move to a mill where the superintendent was more complaisant.

As the South has in some sections built more mills than it has the labor to operate, the loss of several good employees is a serious matter to the superintendent of a small mill. Since the restrictive acts have gone into effect, exclusion is easier, though the child labor acts are not strictly enforced for lack of an adequate force of inspectors.

The number of children employed in the cotton mills, the wages paid the operatives, and the conditions under which they work have been the subject of much excited controversy. The actual number of persons under sixteen employed in manufacturing industries in any Southern state is smaller than in some Northern states, but the proportion is larger. In South Carolina it is highest, 12.9 per cent, and in North Carolina 11.3 per cent. The proportion to the whole number of workers in Georgia is 5.8 per cent, and in Alabama 5.1 per cent. In the cotton mills alone it is of course higher. The actual number under sixteen employed in North and South Carolina and Georgia is almost the same as in Pennsylvania alone. During the census decade the proportion fell from 18 per cent in South Carolina and from 14.1 per cent in North Carolina.

The rate of wages paid in the South has been influenced in a large measure by the profitableness of agriculture. The cotton manufacturing industry is growing and the wages paid must be high enough to draw workers from the farms and to hold them in the mills in spite of the constant opportunity to go back to the land; for the cotton mill workers were born on farms or are only one generation removed, and they have the opportunity of returning at any time. In the early days of the industry wages were low and conditions sometimes hard — but they were harder on the farms. The increasing demand for workers and the increased profit in farming arising from the high prices of agricultural products during the last ten years have caused a decided increase in wages. The average wages in New England and in the South cannot always be fairly compared because much of the work is not comparable. The expert male mule spinner on fine yarns is not in the same class with the unskilled girl who

spins coarse yarns on ring frames in the South. The skilled weaver on fancy cloth in the North and the man or woman producing coarse sheeting in the South are not doing the same work. Where work can be compared the wages now paid in the South compare favorably with those paid in other sections. They are higher than in any other occupation open to the operatives in the South. When considered per unit of product the Southern manufacturer often pays more than his competitor in New England, for a large proportion of the operatives in most Southern mills have not yet attained great skill, and therefore do not get full production from the machines.

The workers in the Southern mills are better housed, have a greater variety of food, and are better clothed than they were on the farm. Their workrooms are well lighted, well ventilated and well heated in winter. The work is not continuous, and does not require great physical exertion, but rather attention and skill. The stories of cruel overseers are generally fiction. If restrained by no other motive, overseers do not risk losing a whole family by an act of cruelty or injustice to an individual. On the other hand, the hours are long, children are admitted too young, and night work is injurious. As said above, however, the hours have been shortened, and the age of entrance raised by legislative action and further legislation will not be long delayed. Night work has been reduced, partly by law, partly from economic considerations.

Conditions are not ideal, but they are not so dark as they have been painted. Dr. C. W. Stiles, of the United States marine hospital service, well known as the discoverer of the hookworm in the United States, is quoted as saying that children are better off in the cotton mills than on a hookworm-infected farm — and there are many such. Others who have compared cotton mill villages and mountain farms are decided in their opinion that the balance is altogether in favor of the cotton mill.[1] Hours of labor and general conditions at their worst were never so bad as in New England or in Great Britain, *in the same stage of*

[1] See T. R. Dawley, "The Child that Toileth Not."

the industry, and the South is improving those conditions more rapidly than did either of these communities.[1]

The general opposition to interference with individual liberty mentioned above is not unqualifiedly true, however. If a moral aspect can be given a question, individual rights may be set at naught. Therefore we see in several of the states general laws forbidding the sale and, in some cases, the transportation of intoxicants, and a large part of the remaining territory is dry through local option. Of course the moral aspect has not been the only influence. Alcohol and the negro make a worse combination, from the standpoint of efficiency and of public order, than alcohol and the white. Employers of negro labor, therefore, joined in the movement, and the rural saloon is almost extinct. There is much illicit selling, — "blockading" it is often called, — but conditions are undoubtedly better, at least in the country and the small towns. In the cities and larger towns there is naturally more evasion of the law. Unfortunately there is reason to believe that the use of certain drugs, cocaine especially, is increasing among the negroes in spite of vigorous efforts to prevent the sale of it, and the harmfulness of whisky is slight in comparison.

The new South has not solved the "negro problem." It is still a riddle to which no man, however wise, can find the answer. Every prophecy made a half century ago has been disproved, both the rosy anticipations that the negro would at once prove himself the equal or superior of the Southern white, and the dismal prediction that he would relapse into barbarism and starve. He has managed to exist and to increase in number, though at a somewhat slower rate than the whites. He has remained in the South, for the South is still the home of 89 per cent of the 10,000,000 negroes in the United States. He forms 29.8 per cent of the population of the Southern states, and owned in 1910 4.4 per cent of the land compared with 3.7 per cent ten years before. He cultivates as a manager or as a tenant 7.6 per cent additional of the land, or 12 per cent in all.

[1] See M. T. Copeland, *op. cit.*, Holland Thompson, *op. cit.*, T. M. Young, "The American Cotton Industry."

That part of the negro population living in cities and towns owns many houses and shops, and the valuation of personal property is considerable. Here and there a member of the race, — perhaps in a majority of cases a mulatto — is well-to-do, or even wealthy, through trade, contracting, money-lending, dealing in real estate or farming. The late Governor Aycock of North Carolina many times chuckled over the boast of an old negro acquaintance that he could not afford to be governor, as the income from his strawberries amounted to more than the governor's salary. But when the whole amount of negro property is divided by the total population, the average amount is pitifully small.

This poverty cannot be attributed primarily to discrimination. Speaking broadly, the right of the negro man to work with white men has not been questioned. He is excluded from indoor occupations where he would work by the side of white women, as in the cotton mill, but in nearly every Southern town negro carpenters, masons, blacksmiths, plumbers, and teamsters work along with the whites. Where trades-unions have been organized, negroes are sometimes excluded, or separate unions are organized by them, but the percentage of organized labor in the South is almost negligible. It is the universal testimony that the proportion of negro mechanics is growing smaller, because the young negroes are not willing to undergo the apprenticeship.

Twenty-five years ago a majority of the locomotive firemen and brakemen were negroes. The proportion now is small, and the attempt of one railroad to put negroes back on the engines a few years ago led to friction. At the same time one may today find thousands of negroes in the engine rooms of industrial plants, often in charge of them. Twenty-five years ago, the trade of barber was almost monopolized by negroes. Now most towns have a "white barber shop," though shops conducted by negroes for white custom are still common. Not long ago hotels employed negro waiters almost exclusively. In many places we find that white women have been introduced, but the force is all white or all black. Here it was simply a question of effi-

ciency and reliability, for, other things being equal, the negro was preferred by a majority of the patrons.

Measured by the tests of efficiency and reliability too many negroes are deficient. They do not perform well the work they are perfectly competent to do; they cannot be depended upon to keep their promises to report for work, or to work regularly when they do report.[1] There are thousands of honorable exceptions, of course, negroes who are faithful, reliable, and efficient, but the weight of the evidence seems to show that proportionately this class is not increasing.

In fixing the relations between the races the white man has made and is enforcing certain decisions. He has determined that the negro shall not exercise political power, and through literacy tests and "grandfather clauses" has eliminated a large proportion of the negro vote without lessening appreciably the number of whites otherwise entitled to vote. The poll-tax requirements, which apply to both races and demand payment of such taxes long before election, disqualify many whites as well as negroes. The effect of both renders the negro impotent politically without resort to the fraud or intimidation of earlier days.

The fixed decision against any sort of social equality is old and shows no signs of weakening. The laws against intermarriage remain unchanged. There is no suggestion that separate schools be discontinued; hotels and restaurants cater to the one race or the other, and the color line is as sharp as ever. Perhaps, indeed, it is drawn even more sharply, for in former days there were real friendships between white and black, and there was more association at least. Negro and white boys play together much less than in my childhood.

The white man has attempted to reduce the possible sources

[1] A sane study of the negro on the Mississippi plantation is Alfred Holt Stone's "Studies in the American Race Problem." See also, Albert Bushnell Hart's "The Southern South." See also Patience Pennington, "A Woman Rice Planter," a naïve but illuminating account of life on the coast of South Carolina. E. G. Murphy's "Problems of the Present South" is also valuable, and Ray Stannard Baker's "Following the Colour Line," though somewhat superficial, is worth reading.

of race friction. So we have the separation of the races on railway trains, in railway stations, and often in the street cars. Race prejudice had its influence here also, but these measures could not have been carried without the help of conservative persons, whose motive is that stated above. That the law requiring "equal accommodations" is violated is obvious to any traveler, for the railroads have often assigned old and inferior equipment for the use of the negroes.

This separation of the races in public conveyances is one of the chief grievances of the negro and mulatto agitators, and yet here is the impression made upon a distinguished English journalist by his experiences:[1] "Well, that day in the 'black belt' of the Mississippi brought home to me the necessity of the Jim Crow car. The name — the contemptuous, insulting name — is an outrage. The thing, on the other hand, I regard as inevitable. . . . The tension between the races might be indefinitely relaxed, outrages might become a well-nigh incredible legend, the gospel of the toothbrush might be disseminated among the negroes ten times more widely than it is; and still it would not be desirable that the two races should be intermingled at close quarters in the enforced intimacy of a railroad journey. . . . The two races can get on well enough if you give them elbow-room. But elbow-room is just what the conditions of railway travelling preclude; wherefore I hold the system of separate cars a legitimate means of defence against constant discomfort. Had it not been adopted the South would have been a nation of saints, not of men. It is in the methods of its enforcement that they sometimes show themselves not only human but inhuman."

In spite of the difficulties of race relations, there is remarkably little friction since negro suffrage has been so much restricted. While the negro was a political factor there was more friction. An impossible situation proves not so impossible in practice. One may live long in some parts of the South without realizing that there is a negro problem. The ordinary negro goes more

[1] William Archer, "Through Afro-America," p. 70.

or less cheerfully about his affairs evincing little interest in his "rights" or his "wrongs." He may work regularly, but always attends his church or his lodge, and arrayed in the gaudy regalia of the latter attends the funerals of its deceased members. His inmost thoughts no white man is likely to know, but he greets him with civility as he passes, and "promises faithfully" to come to work day after to-morrow, and sometimes he comes. In the past there was always some white man to whom he could turn in time of trouble, for advice or help and such a relationship may still continue. He reacts sluggishly to the constant appeals to his race-consciousness which he hears from the pulpit or from traveling organizers.

There are two distinct parties among the negroes of the United States. One, headed by Booker T. Washington, is opportunist, preaching the gospel of work, encouraging the acquisition of property, and advocating the cultivation of friendly relations with the whites. This leader once said: "The trouble with the negro is that he is all the time trying to get recognition, whereas what he should do is to get something to recognize." The other party, composed chiefly of the "intellectuals," — nearly all mulattoes, — is radical. It demands all the rights and privileges of American citizens regardless of fitness and opposes all social discrimination. To them President Washington is a traitor, and their hatred of him is intense. Their motto is "object, agitate, fight," and some of the leaders from their safe position in Northern cities advocate the use of the dagger and the torch. For obvious reasons they do not live in the South. Though the great mass of the negro population of the South may never have heard of either party, the influence of Washington is the stronger, and the attitude toward the whites in the ordinary affairs of life is not unfriendly.

Beyond the fixed principles mentioned above what is the attitude of the white man of the new South toward the negro? There is none, — or rather there are attitudes. In the mountain region where few negroes live it is one of aversion and intense dislike. In one county of North Carolina, it has been jocularly said that

no negro or Democrat is permitted to live. While the statement is an exaggeration, the country is overwhelmingly white and Republican. Outside of this mountain region, which is exceptional, it may be stated, subject to exceptions, that where the negro population forms a small, or a very large, proportion of the total population, relations are not strained. Where the races are more evenly divided there is more friction.

On the other hand, there are cross divisions. The members of the old slaveholding class have generally only kindly feelings toward the negro, but these are not always shared by their children. The small landowners, and the tenant farmer are often intolerant. It is to this part of the population and to the factory operative that those demagogues whose chief stock in trade is abuse of the negro make their most fervent appeals. There is growing up another group, the members of which are studying the problem from every angle to discover whether any help may be had from the experience of other countries with similar conditions. They recognize the permanent handicap to Southern prosperity if nearly one-third of the population is to remain inferior and relatively inefficient, with the resulting economic and social friction. They desire that more than justice be done.[1]

That absolute justice has been done, no thinking student of the problem can maintain for a moment. The negro has received more and less than was due him. Undoubtedly when members of the races come into personal conflict the white man is often less severely punished. Gambling and illicit sale of whisky are also punished more severely when the offenders are negroes. On the other hand, thousands of instances of petty thievery, breach of contract, criminal carelessness and violation of the marriage relation never reach the courts at all. They are excused or ignored simply because the offenders are negroes. Every Southerner knows this and the statistics of negro criminality in the North where the proportion of negro crime is much higher than in the South furnish corroborative evidence. The fact that most of the Northern negroes live in the cities cannot ex-

[1] See Ray Stannard Baker, *op. cit.*, Chap. xiii.

plain the whole difference. That the negro is often cheated by his employer or by the merchant is undoubtedly true, but that such cases are more frequent than similar exploitation of the ignorant foreigner in other sections would be difficult to prove. On the other hand, every employer and every merchant extending credit to negroes charges to profit and loss as uncollectible many dollars which negroes deliberately avoid paying.

The negroes do not receive their per capita part of the school funds, though they receive much more than they pay. A part of the discrepancy is due to the lower average attendance, a part to the higher cost of secondary over primary education. From economic pressure, lack of interest, or lack of ability, comparatively few negroes attend high schools or colleges or even go beyond the primary grades. If the cost of teaching Italian children in New York City, comparatively few of whom as yet attend the high schools or the city colleges, could be separated, it would be found that the amount spent, compared with the whole number, is much smaller than the average. The salaries paid negro teachers are less than those paid whites partly because they will work for less and partly because fewer earn the higher certificates. The term of the negro schools may be as long as the white at less cost. But when allowance is made for these factors negro school accommodations are inferior to those provided for whites.

There are strong opponents of any form of negro education, men who wish him to be an ignorant agricultural laborer, but they are in the minority.[1] There is a strong feeling that the education of the negro should bear a more vital relation to his position in the community, but the experiment has been seldom tried.

The general question of education is to be treated in another paper in this volume and it is unnecessary to speak of it here except in its social relations. In many parts of the South the enthusiasm for education is a vital force in community life. In some of the cities and towns the schools do not suffer by com-

[1] See Connor and Poe, "Life and Speeches of Charles B. Aycock," for an interesting account of the position approved by the better sentiment of the South.

parison with those in other sections, and many of the rural schools are likewise excellent; the percentage of illiteracy is being rapidly reduced; and the school is becoming more and more a center of community life. The school, however, is only one of the factors which is making rural life more attractive in some sections, thereby indirectly raising wages in the cotton mills. Some parts of the South are covered by a network of telephone wires, and the rural carrier brings the mail daily. The South is spending millions to improve the roads, and farmers are buying motor cars; private waterworks and electric plants are not unknown; and the country church is taking on new life, for the South is beginning to learn the meaning of coöperation.

The tenant farmer shares much of this development, for the proposition that the "Southern whites are the most democratic people in the United States in their relations with one another" can be maintained by strong evidence. The "old aristocracy" has lost its power, politically and economically, and plutocracy has not yet been established in its stead.

Politically the ordinary man is in command. Naturally he has made some mistakes in the men he has chosen to represent him in his state legislature or at Washington, for democracy does not always bring the wisest men to the top. Some have been demagogues, some have shown themselves unwise and intolerant, some have been unequal to great responsibilities. They have offended against good taste oftener than the representatives of the old South, and perhaps as a whole they are not so strong. Some of them, however, take rank with the best of the old régime and are proving that the new South still breeds statesmen. Such as they are they represent the struggle of the people to find themselves.

No account of the new South would be complete without reference to the women. It has been well said that the Southern women kept the war going. It is equally true that they are doing much to keep alive its bitterness. Unreconstructed men are becoming rare; unreconstructed women, perhaps because they suffered more, are common. Whatever her feelings, she

has been steadfast, if not always patient. Women whose lives had been free from toil or worry have done the meanest of manual labor without a whimper. The younger generation has faced facts, and when it has been necessary for her to make her own living she has done so, without losing social consideration thereby, for, as was said above, the new South is democratic. She is teaching, nursing, practicing medicine, acting, setting type, reporting, acting as stenographer, clerk or cashier, working in the mills, keeping a shop, carrying the mail on a rural route, farming, raising flowers, vegetables, or poultry, acting as housekeeper or matron, as well as continuing the old occupations of keeping boarders and sewing. No longer feeling that woman's only sphere is the home, she is beginning to demand the ballot.

The South is to-day one of the most interesting of countries, — for it still insists upon regarding itself as a distinct country, — and the limits of this paper have allowed only a glance at some of the problems of the Southern people. It is a puzzling region, full of contradictions and sharp contrasts. The population is predominantly rural, and yet industrialism is growing with marvelous rapidity. The people are religious — for there is more of Puritanism surviving in the South than anywhere else — and yet instances of lawlessness are frequent. They are kindly, but occasional manifestations of cruelty shock the world. They believe in race purity, and yet we see the mulatto. They are individualists and yet, on occasion, they sink all considerations of personal comfort or advantage. But whatever the problems the people have faith that they will be solved. Hopefulness and a growing spirit of coöperation are the most distinctive and the most cheering features of the new South.

XIII

THE POLITICAL PHILOSOPHY OF JOHN C. CALHOUN

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XIII

THE POLITICAL PHILOSOPHY OF JOHN C. CALHOUN

It is the purpose of this paper to examine the political theory of John C. Calhoun — the foremost of Southern jurists and the ablest expounder of Southern political theory as well as of Southern constitutional law. The views of this great authority upon the constitutional questions involved in nullification, secession, and slavery are well known; but the political theory upon which these opinions rested is, unfortunately, far less familiar, although equally essential to a proper understanding of Calhoun's position. The work in which Calhoun's ideas are best expressed is *A Disquisition on Government*, accompanied by *A Discourse on the Constitution and Government of the United States*[1] one of the most notable American treatises on political theory that appeared during the first half of the past century.[2] This, taken in connection with the numerous public utterances of Calhoun, affords a basis for the study of his political philosophy. It is not proposed to examine here the public career or the constitutional theories of Calhoun, for these have already been a topic of frequent discussion, but merely to sketch the principles of his political philosophy in their relation to the general movement of political theory and to his system of public law.

I

The "social contract" theory which had long held sway in America was not accepted as a fitting foundation for the politi-

[1] Published posthumously.

[2] See "Calhoun's Works," edited by Richard K. Cralle; "Letters of John C. Calhoun," edited by J. Franklin Jameson, in Vol. II, Annual Report of the American Historical Association for 1899. Of especial importance are Calhoun's speech on "The Force Bill," 1833, Vol. II; "Reply to Webster," 1833, Vol. II; "Reception of Abolition Petitions," 1837, Vol. II; "The South Carolina Exposition," 1828, Vol. III; "Oregon Bill," 1848, Vol. IV; "Veto Power," 1842, Vol. IV.

cal system of Calhoun. He condemned in no uncertain terms the time-honored hypothesis of a pre-civil "state of nature" and the origin of government by means of a contract. This had been the theory of the revolutionists in the seventeenth and eighteenth centuries, and continued to be the prevailing American doctrine even in the nineteenth. In fact, this hypothesis of an original "state of nature" and the contractual character of government had been one of the leading principles of "the fathers"; the theory of contract had even been extended from individuals to the relations between the states;[1] it was recognized in many of the state constitutions; adopted by men of all parties, aristocrats as well as democrats; and was generally accepted as the correct theory of the origin of political institutions. In the politics of Calhoun, however, there was no place for the assumptions of the *Naturrecht* philosophy, and he had no sympathy with its interpretation of the nature of government.[2] The "state of nature" he regarded as a mere fiction, an unwarrantable hypothesis. As he says:

> Instead of being the natural state of man, it is, of all conceivable states, the most opposed to his nature, most repugnant to his feelings, and most incompatible with his wants. His natural state is the social and political.[3]

Government is not artificial and unnatural, but perfectly natural in the sense that it is necessary to the development and perfection of human powers. Government is not a matter of choice, depending for its origin and continuance on the caprice of the individual; on the contrary, it is a primary necessity of man, and, "like breathing, it is not permitted to depend on our volition."[4] There are, reasons Calhoun, two fundamental ele-

[1] See H. St. George Tucker, "Commentaries on Blackstone," 1803; James Wilson, "Works," Vol. I, p. 539; Madison, "Works," Vol. IV, p. 63. Story accepted the contract theory in a qualified sense only ("Commentaries," sec. 327). These doctrines are summarized in Merriam: "History of American Political Theories," Ch. II.

[2] Calhoun was doubtless influenced by Thomas Cooper. See his "Lectures on the Elements of Political Economy," 1826, pp. 64, 360, in which he violently denounces the natural-right theory.

[3] "Disquisition," p. 58.

[4] *Ibid.*, p. 8.

ments in the constitution of man: one the selfish, the other the social, instinct or tendency. Of these two, however, the stronger is the selfish tendency, and, as a consequence, there arises conflict between individuals which must be in some way controlled. The instrument by means of which this control is effected is government — a necessity arising out of the essential nature of man.[1] *Society* is necessary to man; *government* is necessary to society. But government itself contains the germs of evil, and must in its turn be controlled or balanced. To this end is erected a constitution intended to hold in check the destructive tendencies found in government.[2] This constitution bears the same relation to government as government does to society; as government restrains the selfish tendencies of the individual, so the constitution checks the selfish tendencies of the government. There is this difference to be noted, however, that government is of divine origin, whereas the constitution is a human device and construction. There *must* be a government; there *may* be a constitution.[3]

The organization of the constitution Calhoun regards as one of the greatest of political problems. How can the government be the members of the society? Calhoun's answer to this perennial problem is that there must be created an *organism* "by which resistance may be systematically and peaceably made on the part of the ruled, to oppression and abuse of power on the part of the rulers."[4] This result may be effected by establishing the responsibility of the rulers to the ruled through the exercise of the right of suffrage — the primary principle in the establishment of constitutional government. Yet this principle alone is inadequate to afford the necessary protection; "it only changes the seat of authority, without counteracting, in the least, the tendency of the government to oppression and abuse of its powers."[5] We are still confronted by the imminent danger that the majority of the electors will prove to be tyrannical, and

[1] *Ibid.*, pp. 1–4. Calhoun avoids using the term "selfish," substituting "direct" or "individual."

[2] *Ibid.*, p. 7. [3] *Ibid.*, p. 8. [4] *Ibid.*, p. 12. [5] *Ibid.*, p. 14.

oppress the weaker minority as intolerably as the most irresponsible government.

Calhoun enters, therefore, on a vigorous polemic against the despotism of the majority. He asserts that the tendency of the majority is to identify itself with the whole people, and hence to assume all the rights belonging to the people. Although only a fraction, they regard themselves as the whole, and act as if the whole people; while, on the other hand, the minority is treated as if it were nothing at all. Again, Calhoun points out the probability that great political parties will arise, that their organization will become increasingly centralized, and that stricter party discipline will prevail. Offices will come to be regarded as the legitimate reward of the victorious party, while recognition of other than partisans will be excluded. Party strife will become fiercer and fiercer as it becomes more factional, and will finally result in an appeal to force and the establishment of absolute government.[1] The rule of the numerical majority is hence regarded by Calhoun as inevitably tending toward oppressive and absolute government.

Calhoun anticipated the development of the modern party and spoils system. The intensity of the party struggle, he said, "must lead to party organization and party caucuses and discipline; and these, to the conversion of the honors and emoluments of the government into means of rewarding partisan service, in order to secure the fidelity and increase the zeal of the members of the party." The government of the party will gradually pass from the hands of the majority into those of its leaders. As the struggle becomes more bitter "principles and policy would lose all influence in the elections; then cunning, falsehood, deception, slander, fraud and gross appeals to the appetites of the lowest and most worthless portions of the community would take the place of sound reason and wise debate."

On the floor of Congress Calhoun declared: "When it comes to be once understood that politics is a game, that those who are engaged

[1] "Disquisition," p. 42. Calhoun had before him the spoils system inaugurated by Jackson. See Works, Vol. II, p. 435.

in it but act a part, that they make this or that profession not from honest conviction or intent to fulfill it, but as the means of deluding the people and through that delusion to acquire power, when such professions are to be entirely forgotten, the people will lose all confidence in public men and they will be regarded as mere jugglers."[1]

Nor is there any way by which this inherent tendency may be effectively restrained. It may be urged that a sufficient check is found in the power of public opinion to keep party spirit within reasonable limits. But to this Calhoun is not ready to assent. He concedes the great power of public sentiment, particularly the public sentiment of modern times in its highly developed form, but does not consider it even now as an effective barrier against the tendencies of the majority. Public opinion itself may be just as despotic as the majority party, just as radical and unreasonable, and consequently as uncertain a defender of the rights of the minority. Nor are constitutional restrictions or the separation of powers of sufficient force against the majority. All restrictions must be interpreted, all requirements carried out, by the prevailing party, and if not in accord with their tendencies will be practically made of no effect. The minority is helpless and must submit to any adjustment of constitutional balances that may commend itself to the majority.[2]

The "tyranny of the majority" is, then, one of the fundamental propositions in the theory of Calhoun. Majority rule is always liable to abuse at the hands of a party, an interest, or a section, which interprets constitutional law, determines public opinion, arrogates to itself the right and privilege properly belonging only to the whole people.

With dramatic power Calhoun pictures the inevitable advance of majority encroachment and aggression.[3]

[1] Calhoun stated his own position on the spoils system as follows:

"I for my part must say that according to my conception the true principle is to render those who are charged with merely ministerial offices secure in their places so long as they continue to discharge their duties with ability and integrity." Cong. Debates, Vol. 10, p. 560.

[2] "Disquisition," pp. 22 ff.

[3] It is interesting to note that Calhoun objected to party caucuses and conventions, "because they are irresponsible bodies, not known to the constitution." The

Application of this principle is made in reference to a question of taxation. Under the operation of the numerical majority, says Calhoun, a party or section obtaining power may easily abuse and oppress another section found in the minority. Taxes may be levied by the majority section which fall upon the minority section; not only this, but these taxes are actually returned by the minority to the majority, virtually as bounties paid by the weaker to the stronger party. The case in point was that of the protective tariff which he considered to be levied for the benefit of the North at the expense of the South. It seemed to him, therefore, an excellent illustration of the "majority tyranny" upon which so much emphasis had been laid.

In place of the dangerous "*numerical* majority," Calhoun presents his doctrine of the "*concurrent* majority." The basis for this is found in the existence of varied and diverse interests, which under the law of the absolute or numerical majority are liable to suffer from governmental oppression. "All constitutional governments," says Calhoun, "take the sense of the community by its parts, each through its appropriate organ." [1] On the other hand, those governments in which power is centered in an individual or a body of individuals, including the majority of all individuals, may be regarded as absolute governments. The principle upon which they rest is, in last analysis, force, in contrast to the principle of constitutional governments, which is that of compromise. Under the "concurrent" or "constitutional" majority system this principle of compromise will be made effective by giving "each interest or portion of the community a negative on the others." [2] Without a "concurrent majority" there can be no negative; without a negative there can be no constitution. Calhoun declares that —

> It is this negative power — the power of preventing or arresting the action of the government — be it called by what term it may — veto, interposition, nullification, check, or balance of power — which, in fact, forms the constitution.[3]

election of the president, he held, should be left to the electoral college as the framers of the constitution intended. ("Works," Vol. IV, p. 394.)

[1] "Disquisition," p. 36. [2] *Ibid.*, p. 35. [3] *Ibid.*

The positive power makes the *government*, but the negative power makes the *constitution*. The essence of the "concurrent majority" is, then, the veto power granted to the various separate interests. Governmental action is conditioned, not upon the consent of a *majority* of *individuals*, but upon that of *all interests*.

The advantages of such a system are presented with great enthusiasm. With a "concurrent majority" there will be a greater degree of attachment to the state than is otherwise possible.[1] Attention will be attracted not so much to party as to country. Public policy will not be directed against any one interest or group, and hence there will be no violent resentment and animosities aroused, such as always arise under the rule of the absolute majority. Consequently there will result a higher development of "common devotion." Politically and morally there must follow, according to Calhoun, loftier standards of conduct under the régime of compromise than under that of force. Moreover, under this system there may be obtained a higher degree of liberty.[2] Government will be effectually restrained from arbitrary and oppressive conduct by the veto power of the various interests, and thus political freedom will be guaranteed. In any other government, indeed, liberty can be little more than a name; the "constitutional majority" alone makes it a reality. By the same logic, civilization and progress are fostered by the system of compromise, for under it are secured liberty and harmony — two of the greatest stimulators of civilized development.[3] On the whole, Calhoun would conclude that the "organism" known as the "concurrent" or "constitutional" majority is eminently adapted to realize the great ends of government included under the protection and perfection of society.

Two objections may be raised against the proposed system, Calhoun concedes; namely, its complexity and its ineffectiveness. To the first of these he replies that undoubtedly the simplest of all governments are absolute and that all free governments are

[1] *Ibid.*, p. 47.

[2] *Ibid.*, p. 59.

[3] *Ibid.*, p. 61.

of necessity complex in their nature.[1] Hence this style of argument applies to the whole philosophy and practice of free governments which he does not consider it necessary to defend. The objection to the effectiveness of the proposed system is not regarded as serious. Calhoun maintains that in times of real stress the compromise principle is not hostile to the passage of necessary measures, and that any policy agreed upon is far more enthusiastically supported than if compelled by force. Obedience will be rendered, not from a selfish or sectional motive, but from a higher sense of obligation to country. An analogy to the compromise principle is discovered in the unanimity required of a jury before decisive action can be taken. As necessity leads the jurors to a unanimous decision, so the far more imperious necessities of government will lead to a compromise and agreement in the affairs of state. Historical illustrations of the compromise principle are afforded by the experience of Poland with the *liberum veto*, by the Confederacy of the Six Nations, the Patricians and Plebeians in Rome, the Lords and Commons in England, and by the United States, if the original intentions of the fathers were carried out.

It is now evident that Calhoun's argument all leads up to the defense of a particular theory of public law in the United States. "Concurrent" or "constitutional" majority is simply the prolegomena to nullification. The interests to be consulted and given a veto power are the separate states of the union. The tyranny to be averted is the enforcement of protective tariff laws or the passage of laws unfavorably affecting slavery interests.

Upon this foundation of political theory is erected a structure of public law famous in the history of the American union. This is the doctrine of nullification as expounded by Calhoun, its most powerful advocate. The individual states of the union are to enjoy a veto on the proceedings of the general government, thus establishing the principle of action through the concurrent

[1] Compare Webster: "The simplest governments are despotisms. . . . Every free government is necessarily complicated because all such governments establish restraints as well on the power of government itself as on that of individuals."

instead of the numerical majority. A state may reject any measure of the general government regarded as inconsistent with the terms of the constitution; may, in other words, nullify the proposed action of the federal government. If three-fourths of the states support the action of the government, the nullifying state must either yield or withdraw from the union.[1] Thus a constitutional means of defense is possessed by each state; there is no possibility of tyrannical conduct on the part of the "numerical majority"; and the action of the "concurrent majority" is assured. Nullification, in Calhoun's eyes, was not only a theory of the relation of the states to the union, but it was a theory of constitutional government in general; founded not merely in the particular process by which the United States came to be, but equally essential in the framework of any free constitution.

Calhoun does not limit the application of this principle to the field of interstate affairs in the United States. It is also recommended as a sound basis for government within the individual states. In South Carolina, for example, he points out, representation in the legislature is distributed on the basis of property, population, and territory. Representation in the senate is based on election districts, and thus gives to the southern part of the state the predominance in that body; the house is based on property and population, thus giving the northern part of the state the majority there. As the governor, the judges, and all important officers are elected by the legislature, there is established an equilibrium between the sections. "Party organization," says Calhoun, "party discipline, party proscription, and their offspring, the spoils principle, have been unknown to the state."[2] The same principle and similar methods might well be introduced, he thinks, into other states and there be followed by like beneficent results. As already stated, nullification as conceived by Calhoun was not simply a theory applicable to the American Union, but a fundamental doctrine of free government. Whether the political theory of nullification was chron-

[1] "Discourse," pp. 297 ff.

[2] *Ibid.*, p. 405.

ologically or only logically antecedent to the constitutional theory of nullification is a matter which need not here be discussed; the important fact is that in the developed thought of Calhoun the "concurrent majority" was declared to be a vital element in constitutional government.[1]

II

A further departure of Calhoun from the traditional American theory is found in his defense of slavery.[2] He it was who formulated most clearly the doctrine which served as a justification for the subjection of the negro. Tolerated rather than approved in the early days of the republic, slavery had never been looked upon with any degree of pride. It had been regarded, not as a positive good, but as a necessary and temporary evil. The growing profitableness of slavery made it, however, economically desirable; the passionate assaults of the abolitionists upon the institution aroused a spirit of resentment against such sweeping condemnation of a "domestic institution," and finally the early feeling of toleration for slavery was transformed into an opinion that, after all, it was really a beneficent arrangement. Slavery no longer seemed to be a stumbling-block; it became the "corner-stone of free government." As Calhoun said, "the discussion over the subject has compelled us of the South to look into the nature and character of this great institution and to correct any false impressions that even we had entertained in relation to it." [3] Out of this inquiry into the nature and character of slavery there came a theoretical defense of the system — a renaissance of the Aristotelian doctrine.

[1] Calhoun favored a plural executive for the United States. This, he urged, was the practice in Sparta, Rome, and even England, where the cabinet is the real executive. In the United States there should be one of the members constituting the executive from each of the two great sections of the country. ("Discourse on Constitution and Government," pp. 392–395.) Calhoun's opposition to Jackson's use of the executive power would also lead him to favor a plural executive.

[2] See Merriam, "History of American Political Theories," Ch. VI. The Political Theory of the Slavery Controversy.

[3] "Works," Vol. III, p. 180 (1838).

To construct such a theory it was, of course, desirable to overthrow certain propositions made in 1776. It has already been shown that Calhoun disposed of the theory of the social contract; we are now concerned with the attack on the theorem that "all men are created equal." The assault was carried on by Calhoun in the most vigorous style. "Taking the proposition literally," said he, "there is not a word of truth in it. It begins with 'all men are born,' which is utterly untrue. Men are not born. Infants are born. They grow to be men." [1] He thought that "it is indeed difficult to explain how an opinion so destitute of all sound reason ever could have been so extensively entertained, except on the hypothesis of a state of nature," [2] which he utterly rejects. Not only, reasons Calhoun, are men not equal, but their very inequality must be regarded as one of the essential conditions of the progress of civilization. There have always been, and must always be, a front rank and a rear rank in the onward march of humanity; to reverse or confound their order would check the advance of the race.[3] The fact that individuals or races are unequal is not an argument against, but rather in favor of, social and political advancement. Calhoun asserted that "there has never yet existed a wealthy and civilized society in which one portion of the community did not, in point of fact, live on the labor of the other." [4] Menial tasks are unsuited to the nature and occupations of free citizens, and are best performed by a slave class, thus freeing the higher class from the necessity of degrading drudgery. As in the Greek states, such a democracy is less extensive, but more intensive; and in Calhoun's estimation a purer and higher type of free government results. On the whole, this relation between the higher and the lower class may be regarded "as the most solid and durable foundation on which to rear free and stable political institutions." [5]

[1] *Ibid.*, Vol. IV, pp. 507–512 (1848).
[2] "Disquisition," pp. 56, 57.
[3] *Ibid.*, p. 57.
[4] "Works," Vol. II, p. 631.
[5] *Ibid.*, Vol. II, p. 632. Governor McDuffie said: "God forbid that my descendants, in the remotest generations, should live in any other than a community having the institution of domestic slavery."

It may be objected that this is an unwarranted interference with human liberty. But to this the answer is that liberty is not a right to which all are alike entitled. On the contrary, it is "a reward reserved for the intelligent, the patriotic, the virtuous, and deserving — and not a boon to be bestowed on a people too ignorant, degraded, and vicious to be capable either of appreciating or of enjoying it." [1] Liberty may be had only by those who are fit for it; if forced on an unfit people, it leads directly to anarchy, the greatest of all curses.[2] Liberty is not for all, and therefore to take it away from those who are unfit for its exercise is no injustice to them, but in reality the most equitable kind of treatment.[3]

Such was the theory upon which Calhoun defended the institution of slavery. He skilfully used the early argument of Aristotle, that some men are slaves by nature; [4] but ignored that of Montesquieu when he said that in modern times "the demand for slavery is the demand of luxury and pleasure, and not that of love for the public welfare." [5]

III

The philosophic basis for nullification and for slavery was thus stated by Calhoun. It remains to show the theory upon which rested secession, the third in the series of propositions which he expounded with such keenness and power. The germ of the argument for secession is inherent in Calhoun's doctrine of sovereignty. Here again is a point of departure from the prevalent political theory. In the early years of the republic it had been generally held that in the United States there existed a divided sovereignty. The states were sovereign in certain matters, the national government sovereign in certain others. If any ultimate sovereign was thought of, it was "the people," as contrasted with the government.[6] "The people," however, was a term of indefinite import, as later became evident

[1] "Disquisition," p. 55.
[2] *Ibid.*, p. 54.
[3] Aristotle, "Politics," Book I.
[4] *Ibid.*
[5] *De l'esprit des lois*, Book XV, Chap. ix.
[6] "Works," Vol. I, p. 139.

when it was urged by one party that "the people" were the people of the several states, and by the other that "the people" were the people of the nation. So far as there was any legal sovereignty, this was held to be divided between two sets of authorities, the local and the general. As Madison said, "it is difficult to argue intelligibly concerning the compound system of government in the United States without admitting the divisibility of sovereignty." [1]

Calhoun, however, was wholly intolerant of any theory of divided sovereignty. To him such a condition appeared logically impossible and contradictory. He reasoned that in its very nature sovereignty must be indivisible. "To divide is to destroy it"; sovereignty must be one, or it is not at all. There can be no state partly sovereign and partly non-sovereign; there can be no association composed of half-sovereign states on the one hand and a half-sovereign government on the other. The vital principle of the state, its life and spirit, cannot be sundered; it must remain one and indivisible. All compromise is rejected, and the doctrine of the indivisibility of sovereignty is presented in its clearest and most striking light.

Applying this argument to the nature of the union, Calhoun asserts that the states were originally sovereign, and that they have never yielded up their sovereignty. They could not surrender a part and retain another part, but they must either have given up all or have retained all; the states must be fully sovereign or fully subject. This was the alternative which Calhoun urged with relentless logic. Given the original sovereignty of the states, and the indivisibility of sovereignty, either the states must be sovereign communities and the United States a mere agent, or the United States must be sovereign and the states subordinate. In Calhoun's theory there was no opportunity given for a division of the field between the states and the union; such a compromise was excluded.[2] It is true, he concedes,

[1] See "Columbia University Studies in History, Economics, and Public Law," Vol. XII, No. 4, Chap. ix.

[2] *Cf.* "Works," Vol. II, pp. 232, 233, in reply to Clayton and Rives.

that the central government enjoys the right to exercise sovereign power, but it does not have the true sovereignty from which these powers are only emanations. The central government acts as a sovereign, but it is not a sovereign. It wears the robes of authority only by sufferance of the legitimate owner, the states.

To the central government there are delegated by the states certain attributes of sovereignty, such as the war power, the taxing power, the power to coin money; but these powers do not constitute sovereignty. In Calhoun's theory the attributes of sovereignty may be divided and the supreme authority itself remain unimpaired.[1] Thus the states do not surrender the sovereignty; they merely forego the exercise of certain of its attributes, and these, moreover, are liable to recall at any moment by the state from which derived.

In Calhoun's theory, in fact, neither federal nor state *government* is supreme, for there is a determining power back of them. One must distinguish, he maintains, between the constitution-making power and the law-making power; the former alone is sovereign, and to its act is due the formation and organization of the government.[2] The constituent power in any state concedes both to the state government and to the national government certain powers or attributes of sovereignty, but, as it may recall the power granted to the state government, so with equal right it may recall the authority delegated to the central government. Throughout this process the sovereign power remains as undisturbed and intact as ever. The practical conclusion which he draws is, naturally, that the states may at any time rightfully assert their sovereign prerogative and withdraw from the union.

It is further important to notice how, on Calhoun's basis, he differentiated the system in the United States from a league or confederacy. What line of demarcation could he draw? What

[1] "Discourse," p. 146. "There is no difficulty in understanding how powers appertaining to sovereignty may be divided, and the *exercise* of one portion delegated to one set of agents and another portion to another."

[2] *Ibid.*, p. 191.

difference could he find between the political organization under the Articles of Confederation and that effected under the Constitution? Calhoun declared that the main difference between these two types of association consists in the fact that the confederacy lacks one essential feature of the "republic," namely, a fixed and stable government. The so-called "government" of a confederacy is "nearly allied to an assembly of diplomats," meeting to determine certain policies, and then leaving their execution largely to the several parties to the agreement. "Our system is the first that ever substituted a *government* in lieu of such bodies. This, in fact, constitutes its peculiar characteristic. It is new, peculiar, and unprecedented." [1]

Among the changes involved in the passage from confederacy to "republic" was, in the first place, a change in the source from which power was derived. The confederacy obtained its authority from the state governments; the "republic," from the sovereign communities themselves. The confederacy was a mere league between governments; the "republic" is a "more perfect union" between sovereign communities. Another point of difference is that in the "republic" there is needed a much more careful specification and enumeration of powers than was required in the confederacy, where the states themselves were immediately concerned in the government.[2] Furthermore, under the confederacy the state governments were superior to the central government, which was merely their agent; but in the "republic" the federal and the state governments are equals and coördinates.[3] Both are inferior in rank to the constitutional convention of the state which gives them life. Lastly there was a change in the method of executing the commands of the central government. The confederacy acted through the states; the "republic" is given power to act directly upon individuals.[4] Such are the points at which these two types of political organization, the "republic" and the confederacy, differ. Calhoun even goes so far as to say that "a federal government, though based on a confederacy, is,

[1] *Ibid.*, p. 163.
[2] *Ibid.*, p. 164.
[3] *Ibid.*, p. 167.
[4] *Ibid.*, p. 168.

to the extent of the powers delegated, as much a government as a national government itself. It possesses, to this extent, all the authorities possessed by the latter, and as fully and perfectly." [1] This is his nearest approach to the current theory that the federal government is sovereign "within its sphere." Calhoun does not admit that the constitution is national, nor that the government is even partly national; [2] but he concedes that the *powers* of the government, as far as they go, are national, "fully and perfectly."

The difference, then, between the "republic," or a federal system, and a "nation" must be sought, not in the character of the powers exercised, but in the basis upon which they rest. It matters not how large the powers exercised by the federal government; if these may be recalled by the states, the federal government is subordinate and they are sovereign. The federal government may have possession; the states have ownership; and they may at any time evict their tenant, or any one of the states may claim its share of the estate.[3]

The argument of Webster, Calhoun's great antagonist, was also legal and technical in its nature and lacked the historical and organic basis of the later nationalists. Webster's doctrine was that the Union is not a treaty relation between sovereign states, as Calhoun argued, or a contract between states by which the sovereignty of the contracting parties is diminished, as Madison contended; but it is a law, resting on a social contract between individuals, and in which the states as such had no part. The constitution is a government ordained and established by the people of the United States. In the expressive language of Webster, the Union is, "the association of the people under a constitution of government, uniting their highest interests, cementing their present enjoyments, and blending in an indivisible mass all their hopes for the future."

Although reasoning with great skill and eloquence from the

[1] "Discourse," p. 163. [2] *Ibid.*, p. 152.

[3] Calhoun's theory was given expression in the constitution of the Confederate States.

strict letter of the constitution, it is evident that Webster's real power did not come from his constitutional arguments as such. The very question over which he and Calhoun fought was whether the Union should be regarded and interpreted from the standpoint of constitutional law or of international law. If the states were never sovereign or had yielded up their sovereignty then Webster's contention, that secession is an unconstitutional act, was valid. But to Calhoun, who looked upon the Union as, in ultimate analysis at least, a treaty between sovereign states, secession could not be regarded as unconstitutional, but at the worst as a breach of international law. The discussion, as they carried it on, amounted to an argument over the legality of an act, with one of the parties denying the existence of the law under which such validity was contested. Webster wished to make a purely legal argument on the question of legal sovereignty. Calhoun declined to make it purely a legal question, but at the same time disregarded the matter of fact.

When we consider the social and economic forces on which political forms are based, Webster had the stronger position, and for this reason, Calhoun was continually looking backward to a state of things that once perhaps may have existed, and he failed to observe that every year was carrying him farther away from his premise. The fatal flaw in his argument was that, even granting his cherished hypothesis that the states were originally sovereign, it did not follow that they would continue to possess that fullness of power forever. On the other hand, Webster's hypothesis was looking to the future tense, and every year of nationalizing conditions was therefore strengthening his contention. The great weight of his argument was due to the fact that even if his interpretation of "We, the people," was denied, it did not follow that his conclusions were not sound. His power as a controversialist really came, not from the strength of his constitutional arguments as such, but from the fact that he followed a great current of public sentiment, springing from the impulse of nationality. He had with him the reasoned and unreasoned forces of an ethnic and geographic unity struggling toward self-expression.

Calhoun recognized this nationalist argument at times. In his early years he took a nationalist attitude, and in 1838 in reply to a suggestion that the best policy for the South would be separation, he said: "That is a natural and common conclusion, but those who make it up do not think of the difficulty involved in the word; how many bleeding pores must be taken up in passing the knife of separation through a body politic (in order to make two of one) which has been so long bound together by so many ties, political, social, and commercial. . . . We must remember it is the most difficult process in the world to make two people of one; and that there is no example of it, if we except the Jews.[1]

The foregoing paragraphs have, it is hoped, made clear the political philosophy underlying the three great issues that agitated this country down to the Civil War. Nullification was based on the theory of the "concurrent" or "constitutional" majority, applied to the general government; slavery was based on the Aristotelian theory of natural and necessary individual and race inequality; secession, on the doctrine of the indivisibility of sovereignty. The clearest exposition of these doctrines was made by Calhoun, although from this we might possibly except the argument upon slavery, which was defended with great dialectical cleverness by several other writers. Of the influence of Calhoun there is no question. He was easily the first in rank among the theorists of his school; his doctrines dominated the South, and under their influence the "irrepressible conflict" was at last precipitated. Calhoun's influence, however, was not confined to America. In the controversy which arose in Germany over the federal state, the theory and practice of the United States were widely influential. One school of thought, headed by Waitz, accepted the theory of the sovereignty of the central government in its sphere, along with the sovereignty of the local organizations in their spheres. Upon another school, of which Max Seydel[2] is the most conspicuous figure, the influence of

[1] Correspondence, 391.

[2] *Grundzüge einer allgemeinen Staatslehre*, 1873. See "Columbia University Studies," Vol. XII, No. 4, Chap. x, on the modern German theory of sovereignty.

Calhoun was marked. As in America, so in Germany, the indivisibility of sovereignty was asserted and the sovereignty of the separate states upheld. As in America, so in Germany, the theory of a divided sovereignty was overthrown, but the fruits of victory were gathered by the union, and not by the states. When the states ceased to be half-sovereign, they ceased to be sovereign at all.

In conclusion, what estimate should be made of Calhoun as a political theorist? Certainly upon many points his political theories were skilfully wrought. This is notably true in regard to his repudiation of the *Naturrecht* theory of an original state of nature and a social contract antecedent to the establishment of government. His assertion of the unity and indivisibility of sovereignty is also in accord with the doctrine now generally accepted by political scientists. On these questions he reasoned with great clearness and force. From another point of view, however, his reasoning, though keen and strong, was narrow and cramped. Calhoun seemed to lack the proper historical perspective. Thus he saw that an inferior and a superior race can with difficulty coexist on the same territory on terms of entire equality, but he applied this doctrine in defense of the institution of slavery long after its death-knell had been sounded throughout the civilized world. The argument from the inequality of races could not justify the complete denial of civil and political rights to the lower race, in the nineteenth century and in the United States. Calhoun saw clearly what De Tocqueville and Bryce have pointed out; namely, the danger of party or majority despotism in a democracy, but he failed to see the impracticability under the given conditions of such a scheme as the "concurrent majority" or nullification. He perceived the difficulty involved in a divided sovereignty, but he overlooked the nationalizing influences that were at work in the United States, and hence failed to see that this very doctrine of the divisibility of sovereignty was the safeguard of states' rights, and that, if conflict were precipitated, the one and indivisible sovereignty would fall to the nation. Granting, for the sake of argument, his favorite premise that the states

were originally sovereign, it did not follow socially, economically, politically that they were still so situated. Calhoun's reasoning was keen and acute, rather than broad and comprehensive. Logic seemed to overbalance the historical and social sense; his conclusions, therefore, were brilliant examples of dialectics, but ill adapted to the time and place in which he lived.

Yet, when all is considered, one must rank Calhoun as among the strongest of American political theorists in the first half of the nineteenth century. Clear in his style of expression, keen and vigorous in the use of logic, Calhoun developed a formidable body of political and constitutional theory, not easy to attack and overthrow. His influence in determining the course of Southern political thought was very great and entitles him to the first place among the theorists of his school. This is as true of his political philosophy as of his public law; for in both Calhoun's influence was predominant.[1]

[1] In the preparation of this paper I have made use of portions of Chapter VII of my "American Political Theories," published by The Macmillan Company, to whom I am indebted for the privilege.— C. E. M.

XIV

SOUTHERN POLITICAL THEORIES

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XIV

SOUTHERN POLITICAL THEORIES

THERE are few, if any, political theories peculiar to the South. Nor is it certain that there is much in the application of these theories that is distinctively Southern. This is not because Southern men have not concerned themselves with theories. On the contrary, they have theorized much and the difficulty in dealing with their theories is, not to find material, but to determine what to exclude from a paper necessarily brief.

There are two ways of approaching the study of the political theories of any people. One is to examine the writings of their publicists. But sometimes the publicists differ and, in that case, it is impossible that they should express the theories of the people, if the people may be said to have any. Another method is to examine their system of government and their laws and deduce from these what must have been the underlying theories. In this study both methods will be employed to some extent, the chief reliance being placed on the latter.

The two greatest political theorists produced by the South, if not by the whole country, were Jefferson and Calhoun, though there were other keen thinkers less well known. Curiously enough, though Calhoun claimed to be a disciple of Jefferson in some respects and belonged to the same political party, they really stood almost at the opposite poles of political thought.

There is probably no document of equal length surpassing the first half of the second paragraph of the Declaration of Independence in the quantity and quality of its statements of political theories. However, it is not merely a statement of Southern theories; they belong to humanity. The theory of equality and of natural or God-given rights is taken as a matter of course, and

these rights are declared to be unalienable. We do not surrender natural rights on entering society, says Jefferson elsewhere, for no man has a natural right to interfere with the rights of others, but we entered society the better to secure these rights. The most important, if not the sum total, of them are the right to "life, liberty, and the pursuit of happiness."

Jefferson held that all just governments rest on the consent of the governed. This consent must have an historical background and cannot be considered as having been given once for all, but must be periodically renewed: in tyrannical governments by rebellion, in free governments by deliberations of the people.[1] He even calculated the time for such periodical renewal of the compact and fixed it for every nineteen or twenty years.[2] The consent of the governed is nothing else than the doctrine of popular sovereignty. Governments are established for certain ends, said Jefferson, and when they fail to accomplish these ends, the people from whom they derive their powers have a right to change them and, if they wish, to try a wholly different form.

The two cardinal principles of the Declaration and of Jefferson's political theories are equality and popular sovereignty. It is hard to say just how far Jefferson believed in the first principle. Certainly the South did not believe in it, though few men of that day favored an aristocracy established by law. When most men talked of equality and freedom they had white men only in mind and among white men they thought that the principle of equality applied only among those of the same class. When Jefferson said that men were born free we must believe that he meant what he said and included the black man, for he favored emancipation;

[1] Writings of Jefferson (H. A. Washington, editor), Vol. VII, pp. 14–17, 19; Vol. II, p. 105. See Ford's edition, Vol. IV, p. 467; Vol. V, p. 116. "The earth belongs in usufruct to the living; the dead have neither rights nor power over it." Compare this rejection of the "dead hand" with the attempt of some of his professed followers to set up the constitution as something "sacred," not to be touched by impious, that is, modern hands. However, Madison respected the "dead hand" and tacit consent. Writings, Vol. I, pp. 503–506.

[2] New York and Ohio have approximated this, but no Southern state has ever done so. In some of them the constitution is still very difficult to amend.

in the matter of equality he went further than the majority of his contemporaries. As for popular sovereignty, he certainly believed some people incapable of self-government at the time, though he did not believe this incapacity was necessarily ineradicable. Such was his opinion of the mob of Europe, "debased by ignorance, poverty and vice," of the people of Latin-America, and even of the inhabitants of Louisiana at the time of its acquisition.[1] Yet he was in advance of his time, for he trusted the people as being competent to choose capable rulers and he advocated universal suffrage in America.[2] People incapable of self-government should, he argued, be trained and gradually accorded privileges as they became fitted to use them.

As for forms of government, Jefferson was ardently attached to the republican, but he did not hold that there was any one form which was best for all men, under all circumstances. On the contrary, he held the very opposite opinion. He was inclined to think that condition of society to be the best where there was no government at all, as among the Indians, but he admitted that this condition was unsuited to a large population. The next best system was a government wherein the will of every one has a just influence, for example, England in a slight degree and the United States in a greater degree. The chief evil of this form was its turbulence, but even this was productive of good. Even "a little rebellion, now and then," was necessary to prevent usurpation and degeneracy.[3] With artificial aristocracies, toward which John Adams, Hamilton, and others leaned, he had little sympathy. Adams was quoted as being in favor of putting the aristocracy into a separate legislative chamber where they could be prevented from doing harm, yet could, at the same time, serve as a protection to wealth against an agrarian and plundering majority. But Jefferson believed in a natural aristocracy based

[1] "Writings," Vol. VI, p. 227, Vol. VII, p. 325. See Ford's edition, Vol. IX, p. 332; Vol. VIII, p. 275.

[2] "Writings," Vol. VII, p. 376, 13.

[3] "Writings," Vol. II, p. 105. The idea that democracies were turbulent was quite generally accepted in the convention of 1787 and was shared by some of the Southern delegates.

on virtue and talent and declared that "that form of government is best which provides the most effectually for a pure selection of these natural *aristoi* into offices of government" [1] as under our constitution.

The term "republic" in Jefferson's day was somewhat loosely used in theory and practice. To him it meant "a government by its citizens in mass, acting directly and personally, according to rules established by the majority," and the more direct the action of the citizen the more republican was its character. In a country of large extent it was necessary for the people to delegate certain powers to representatives elected and removable by them.[2] One of the most essential institutions was annual elections. "Where annual elections end, tyranny begins," said Jefferson.[3]

A theory very popular since the time of Montesquieu was that of the separation of powers. This theory Jefferson accepted, and he denied emphatically that, under the constitution of the United States, one department could lord it over the others. Within its proper sphere, the administration of the laws of property, crime, etc., the judiciary was supreme. "The constitutional validity of laws again prescribing executive action, and to be administered by that branch and without appeal, the executive must decide for themselves also." The same was true for the legislature in its sphere.[4] Commenting on the alleged independence of the judiciary, he declared it to be an axiom of politics that "whatever power is independent is absolute. Independence can be trusted nowhere but with the people in mass. They are inherently independent of all but moral law." [5] For that reason, the contention of some that the legislature was the ultimate expounder of the constitution in every particular was worthy of respect for its safety,

[1] "Writings," Vol. VI, pp. 223–224.

[2] Letters to John Taylor and Nemours (1816), "Writings," Vol. VI, pp. 589, 605.

[3] This sentiment was concurred in by Patrick Henry, who said, "The delegation of power to an adequate number of representatives, and an unimpeded reversion of it back to the people, at short periods, form the principal traits of a republican government." — Elliot's "Debates," Vol. III, p. 396.

[4] "Writings," Vol. VI, p. 463.

[5] "Writings," Vol. VII, p. 135.

since the people could recall a wrong decision by failing to reëlect the legislators who made it.[1]

The end of government, the object for which established, is stated in the Declaration in language which no one has yet improved upon. "To secure these rights," the rights mentioned in the preceding sentence, among which are "life, liberty, and the pursuit of happiness," he says, "governments are instituted among men." In his first inaugural we find the doctrine stated in this form: "A wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government." [2] All of which is simply the doctrine of human rights as broad as humanity itself. The only excuse for any commentary on it lies in the fact that men who claim to be agreed on the general principles differ radically in regard to the specific acts which a government may or may not do in attempting to realize these ends.

Concerning the abstract proposition that society was organized for the promotion of human welfare there was no difference of opinion in the South, if anywhere. But concerning the conditions necessary to the realization of the greatest amount of human welfare and concerning the things that governments may and may not do to realize these conditions there was a wide divergence of opinion. For example, Thomas R. Dew, president of William and Mary College, ridiculed the philosophy of the Declaration in regard to liberty and equality, and his views were accepted by many political leaders. Indeed, most of the Southern statesmen seem to have agreed with Gouverneur Morris that property, not life and liberty, was the main object of government. Calhoun said that men only had to read history and look about them to be convinced of the falsity of the theory that men were born free and equal.[3] Another capital error was the idea that there was any

[1] "Writings," Vol. VI, p. 463. There can be little doubt that Jefferson would have advocated the recall, even of judges, had this modern device been known to him.

[2] Richardson, "Messages and Papers of the Presidents," Vol. I, p. 323.

[3] Crallé, "Works of Calhoun," Vol. I, p. 57.

inseparable relation between liberty and equality. The latter never had existed, and its opposite, inequality, was a natural, if not divinely established, order, and was the great stimulus to progress.[1] Liberty was not a status into which men were born, but a goal toward which men struggled, "the highest reward bestowed on mental and moral development." Rightly interpreted Jefferson probably would have agreed with all of these statements. Certainly he knew as well as any one that, as a matter of fact, men were not born free and equal and that many of them not only were not born with an inalienable right to liberty, but they never attained it. Apparently Calhoun's idea was that the state should stand as a spectator of the race and applaud and reward the successful, having no care for the hindmost man. Indeed, he would go farther, and have the state shackle the backward members of the race and make them serve the successful. His study of history had not revealed "a wealthy and civilized society in which one portion of the community did not, in point of fact, live on the labor of the other." [2] This certainly was "taking from the mouth of labor the bread it has earned." Recording his impressions of a conversation with Calhoun in 1834, Horace Binney remarks: "He obviously considered society as consisting only of two classes, the poor who were uneducated, and doomed to serve, and the men of property and education, to whom the service was to be rendered. Regarding these two classes as discriminating the people of Pennsylvania as much as South Carolina he said, emphatically, 'The poor and uneducated are increasing; there is no power in a republican government to repress them; their number and disorderly tempers will make them in the end efficient enemies of the men of property. They have the right to vote, they will finally control your elections, and by bad laws or by violence they will invade your houses and turn you out. Education will do nothing for them; they will not give it to their children; it will do them no good if they do. They are hopelessly doomed as a mass to poverty, from generation to gen-

[1] "Works," Vol. I, p. 56.
[2] "Works," Vol. II, p. 631.

eration; and from the political franchise they will increase in influence and desperation until they overturn you.'" [1]

A more unblushing statement of the doctrine of government by and for the privileged few it would be hard to conceive.[2] It was framed primarily to bolster up the institution of slavery, on which the privileged classes of South Carolina rested, but Calhoun would have applied it to Pennsylvania as well and have doomed thousands of white men to ignorance and poverty from generation to generation. Jefferson did not believe that every man was either a saint or a philosopher, but he did believe in the possibility of the general elevation of the race and that it was the duty of the state to aid in this work, or at least not to stand in the way. Calhoun held the opposite opinion and the tragedy of it lies in the fact that the South for many years followed his view instead of Jefferson's.

The doctrine of the Declaration of Independence received official sanction in the Virginia bill of rights, written by George Mason nearly two months before the Declaration was adopted. The principles of natural and inalienable rights, popular sovereignty, and government for the common good are all there, but the other early Southern constitutions contained little on this subject. Not a single one formally indorsed the Virginia doctrine of equality and freedom until after the Civil War, though Virginia has remained faithful enough to her early bill of rights to reinsert it in all her constitutions. After the Civil War the principles were incorporated in the various Reconstruction constitutions and they have been allowed to stand in most of the later constitutions, though South Carolina struck them out of hers in 1895.

Distrust of democracy was prevalent in the South in Revolutionary days, though by no means confined to that section. In the federal convention Randolph suggested that the senate should be so constructed as to be a check upon the follies of democracy,

[1] Chadwick, "Causes of the Civil War," p. 41.

[2] For one equally unblushing compare "Lectures on the Philosophy and Practice of Slavery," by Rev. Wm. A. Smith, President of Randolph-Macon College (1856). See especially pp. 53–56, 61–89.

and it was even suggested that representation in this branch should be based on property. Pinckney was so far committed to Randolph's idea that he actually moved that the house of representatives also be chosen by the state legislatures.[1] That the government of Virginia did not conform to Jefferson's idea of republicanism is evidenced by the fact that he roundly denounced it as oligarchical in character.[2]

Indirect elections were common at that time in all the states. In several states judges held office for life, and in Virginia they were practically irremovable until 1830. The county courts in Virginia were a close corporation, a self-perpetuating oligarchy. Gradually the states moved away from indirect elections but South Carolina has always intrusted the election of her judges to the legislature.

But if elections were indirect, they were frequent in conformity with the idea that this was the most essential principle of republicanism. South Carolina alone of the old states rejected Jefferson's idea on this point and instituted biennial elections. All the Southern states abandoned annual elections, and two, Mississippi and Alabama, now elect their legislatures every four years. No Southern state has adopted the recall, and only one, Arkansas, has adopted direct legislation through the initiative and referendum.

The distrust of democracy is seen still more in the qualifications for office and for voting. In the federal convention Mason and Pinckney contended for property qualifications for the executive ($100,000 was Pinckney's suggestion), the judiciary, and the senate in order to "secure the rights of property." [3] Though not successful there, they had already attained this end in the various state governments. The property requirements for the office of governor ranged from the ownership of five hundred acres or other property worth 1000 pounds in some states to 10,000 pounds currency free of debt in South Carolina. For seats in the legis-

[1] Elliot's "Debates," Vol. I, pp. 138, 160, 237.
[2] Letter to Kerchival (1816), "Writings," Vol. VII, p. 10.
[3] Elliot's "Debates," Vol. I, pp. 247, 370, 403.

lature the requirements ranged from a simple freehold in Delaware, value not specified, to 1000 pounds for membership in the Maryland senate. With the growth of democracy all such requirements were ultimately swept away, though some were retained until the Civil War.

In addition to the foregoing requirements many of the states imposed religious tests for civil offices or for membership in the legislature or both. It is not clear that any of these requirements were ever enforced rigidly, if at all. That of North Carolina, one of the most exacting, was declared in the convention of 1835 to have been a dead letter from the beginning. It was supposed to have been aimed at Catholics, but Catholics had held office and one was at the time on the supreme bench of the state. In 1835, by a vote of 74 to 52 the word "Christian" was substituted for "Protestant," [1] and in 1865 the whole paragraph was stricken out. A few states expressly forbade religious tests,[2] while some made no mention of it.[3] Arkansas, Maryland, and Mississippi do not seem to regard belief in the existence of God as a religious test, for they still require such a belief while at the same time they forbid religious tests.

All of the Southern states except Florida and Missouri have at one time or another debarred ministers of the gospel and priests from office or seats in the legislature or both, a thing almost peculiar to the South, for apparently New York is the only Northern state which has ever done so. The reason usually given was that ministers were "devoted to God and the care of souls, and ought not be diverted from the great duties of their functions," a reason which seems to hold good to this day in Tennessee.[4]

The question of suffrage is discussed in another chapter of this volume. Here it is sufficient to point out that, while popular

[1] "Debates" (1835), p. 331.

[2] Tennessee, Texas, Alabama since 1875, Georgia 1865, Delaware since 1792, Virginia since 1830.

[3] Missouri, Georgia, 1789–1865.

[4] On this general subject see the constitutions in Thorpe's Collection; also, Miller, "Legal Qualifications for Office in America," Amer. Hist. Assoc. Report, 1899, Vol. I, pp. 87–153.

sovereignty was accepted in theory, it was not in practice. Probably not more than five per cent of the population of the country enjoyed the franchise in 1789 and in the South the percentage was even lower. It was assumed that the man without property had no interest in a government established primarily to protect property rights[1] and the man who had property was given the ballot to defend himself against the man without property.[2] That the propertyless man might need the ballot to defend himself against the owner of property does not seem to have occurred to any of the privileged class. More than this, plural voting was allowed in South Carolina as late as 1832.[3] The freehold qualification operated to the disadvantage of the townsmen, whether traders or mechanics. In North Carolina a man was required to be the owner of fifty acres to vote for a senator. In 1828 out of 250 voters in Wilmington, only 48 were qualified to vote for members of the upper house.[4]

At the outbreak of the Civil War nearly all of these property and tax-paying tests had disappeared and likewise the right of free negroes to vote in North Carolina (1835). The suffrage was extended to the recently emancipated race by the Reconstruction conventions, but experience with it failed to convince the white race that the negro was intended to form a part of the people in whom sovereignty resides. Forbidden by the federal constitution to disfranchise the negro as a race they proceeded to restore the property and taxpaying tests and to invent others designed to shut out the negro and let in the poor and illiterate white man.[5]

Nowhere is the evidence of the undemocratic character of the

[1] Virginia Bill of Rights, Thorpe, Vol. VII, p. 3813.

[2] But the latter was called on to fight for the former. Out of 74 men who marched from Culpepper to the defense of Washington in 1814 only two enjoyed the franchise. Virginia "Debates," 1829, p. 123.

[3] Schaper, "Sectionalism in South Carolina," Amer. Hist. Assoc. Report, 1900, Vol. I, pp. 424, 438.

[4] "Debates" in the Convention of 1835 (North Carolina), p. 50. For the fraudulent manufacture of freeholds to secure the suffrage see Virginia "Debates," 757. Six counties with 5,207,680 geographical acres had 8,291,486 suffrage acres.

[5] For example, the so-called "grandfather" clause, which makes the right of suffrage an inheritance, and the old soldier clauses.

early Southern state governments better revealed than in the theory and practice regarding the distribution of seats in the legislatures, unless it be in the suffrage qualifications already considered. In the older states of the South representatives were assigned arbitrarily to local government units (counties and towns for the house, counties or districts for the senate) with little or no regard to population.[1] The result, seen and designed beforehand, was to put the control of the states in the hands of the property-owning classes; that is, the wealthy planters. The variations from this to white population in one house and taxation in the other, the "federal population" (free persons and three-fifths of the slaves), or federal population and taxation combined, were all manipulated so as to bring about the same result. It was ostensibly based on the theory that the different interests of any society should be represented, an idea later furnished up by Calhoun in his doctrine of the "concurrent majority." As the population of the Southern states was overwhelmingly agricultural we see little else than agricultural interests represented, although in two or three states the commercial class as such had its representation. In the old states this system, save for the representation of the commercial class, continued until the Civil War.

More democratic principles were found in the newer states. Tennessee and Louisiana alone gave consideration to property, and based their legislative apportionments on the number of taxable inhabitants until 1834 and 1868 respectively. The other new states based theirs either on the number of white males or qualified electors,[2] or free whites[3] or the federal population.[4] Not even the conventions of 1865, confronted by the results of the Civil War, went so far as to make population the basis, but the Reconstruction conventions of 1868 did, and their work in this matter has been accepted as final.

The evolution of the theory of democracy in representation in the older states deserves special notice. The representation of

[1] See especially the constitutions of Virginia, the Carolinas, and Georgia.
[2] Kentucky, Arkansas, Tennessee (1834), Louisiana (1864).
[3] Alabama, Missouri, Mississippi, and Texas. [4] Florida.

the special interests of the commercial classes in North Carolina and Virginia probably arose accidentally out of the survival of the colonial arrangement whereby certain boroughs were given representation, and may not have been originally intended as a concession to that class. But Georgia (1777) gave representation to two of her towns, Savannah and Sunbury, "to represent their trade." [1] This representation was abolished in Georgia in 1798, but persisted in North Carolina until 1835. When a motion was made in the convention of that year to abolish borough representation the existing system found ardent supporters. The fundamental argument for it was that people whose interests were distinct from the interests of the generality of the population should be given representatives through whom they could make their wants known, otherwise they would have to resort to "lobby members." For a specific case, one speaker pointed out that the towns which it was proposed to deprive of representation were heavily taxed, that too, on objects peculiar to themselves. With no voice in the senate, they would then be taxed without representation. When attention was called to the fact that free negroes other than freeholders were taxed, yet not represented, the speaker declared that the bill of rights applied to white men only, though he favored allowing negroes to vote. That this was a fight for the representation of interests was brought out by one speaker, who declared that the boroughs in the lower part of the state should be represented, but Salisbury, which was not a distinctly commercial town, need not be. But in the end borough representation was abolished by a vote of 73 to 50.[2] The basis agreed upon was taxation for representation in the senate and the federal population for the house. The West had desired white population as the basis of representation for the house but accepted the above compromise with good grace. One spokesman for the West said that his "beau ideal" of representative government was "perfect protection to persons in one branch, and to property in the other." [3]

[1] Thorpe, Vol. II, pp. 778–779.
[2] Convention "Debates," pp. 33, 38, 39, 47, 61, 212.
[3] "Debates," p. 90.

The most undemocratic system of representation was found in South Carolina and Virginia and there the fight between the privileged and the unprivileged was almost continuous. At the time of the Revolution both states were controlled by the slaveholders of the tidewater region, and in South Carolina they gave themselves the preponderance in the legislature, taking 20 senators and 70 representatives as over against 17 and 54 for the up country, though the population of the tidewater district was only 28,644 whites and 72,216 slaves, while that of the up country was 111,534 whites and 29,679 slaves. This arrangement they defended against all assaults, saying that if representation were based on population, it would put the wealth of the low country at the mercy of the up country.[1] In Virginia as well as in South Carolina, such inequalities were defended on the ground that interests, which really meant wealth, should be represented. To this Alexander Campbell replied that, if interests or majorities were to be considered, then they should consider a majority of intellects, physical strength, scientific skill, general literature, etc.[2] It is worthy of note that the principle of representation based on the "federal population," which no state would have been willing to see abolished as the basis of representation in the national legislature, was quite generally repudiated by the Southern states for their legislatures[3] and that even for members of Congress the states were so gerrymandered as to throw the advantage to the slave owners.

The doctrine of the separation of powers was sanctioned in the Virginia constitution of 1776, where it was expressly declared that "The legislative, executive, and judiciary department, shall be separate and distinct, so that neither shall exercise the powers properly belonging to the other," a declaration found in many of the other constitutions from that day to this. But this prin-

[1] For a full discussion see Schaper, "Sectionalism in South Carolina," Amer. Hist. Assoc. Report, 1900, Vol. I, pp. 359 ff.

[2] "Debates" in the Convention (1829), p. 119.

[3] Some claimed that the mixed basis was not a repudiation, but an extension of the federal population, the negroes being counted both as persons and as property. Thus Upshur, Virginia "Debates," p. 75.

ciple was not carried out in practice in the early constitutions, the legislatures being given large powers of appointment. At the same time the judiciary was beginning its practice of exercising legislative power, a practice acquiesced in until it has now become in a certain sense the final law maker through its power of annulling and of interpreting acts of the legislature. The appointment of judges by the executive, John Taylor of Virginia considered a violation of the principle of separation of powers, just as it would have been, had the judiciary been authorized to appoint executives for life.[1]

With respect to the proper functions of the state it would not be far wrong to say that the prevalent theory in the South was that of the *laissez faire* school, but there were exceptions to this rule whenever the dominant class found it to their interest to make exceptions.

However, in the last few years they have begun to wake up to a realization of their duty in making the right to life a reality, and have passed pure food and drug laws and laws regulating the conditions of labor and for the protection of the public health, though they are as yet none too well enforced. For example, Louisiana began to protect her fish and game as far back as 1857, but waited nearly half a century to enact a child labor law. In 1910–1911 she spent $129,081 to protect her fish and game, but only $9000 for the health, comfort, and safety of over 76,000 wage-earners. In five years Mississippi spent about $162,000 to replant her oyster beds, yet, with 2600 establishments and 51,000 wage-earners, not a cent for factory inspection. Substantially the same is true of Alabama and other Southern states. Every year hundreds of immigrants, including children five or six years old and up are shipped to the South under the padrone system to work in the canneries and oyster plants under the harshest terms and worst conditions. The excuse is that the goods are perishable.[2] Gradually, if somewhat slowly, the states are beginning to realize that women and children are perishable also.

[1] "Inquiry into the Principles and Policy of the Government of the United States," p. 181.

[2] Edward T. Browne, in "The Missionary Voice," July, 1913, pp. 397 f.; Lewis W. Hine, *ibid.*, p. 403.

On the matter of religious liberty some of the early constitutions were clear and explicit. That of North Carolina (1776) declared that "All men have a natural and unalienable right to worship God according to the dictates of their own consciences." Even the established church had already died a natural death there. South Carolina was not as liberal, declaring (1778) the "Christian Protestant" religion to be the established religion of the state and prescribing the five articles to which all sects wishing recognition must subscribe, but this was stricken out in 1790 and the conduct of elections was taken from the church wardens.[1] In Virginia the established church made a determined fight, in which it was supported by Patrick Henry, Washington, Marshall, and R. H. Lee, but it was unable to withstand the onslaughts of Jefferson and Madison, and the former's bill, doing away with all compulsory support and guaranteeing absolute religious freedom, became a law in 1785.[2] Religious tests for office and for seats in the legislature were recognized as inconsistent with religious freedom and were soon swept away,[3] though the disabilities imposed on ministers were retained in some cases.

Concerning the freedom of the press the early constitutions were equally explicit, that of Virginia declaring that it could "never be restrained but by despotic governments," but that of South Carolina (1778) warned against "irreverent and seditious criticism of the government." When certain persons began an "irreverent and seditious" criticism of the "peculiar institution" on which the privileged classes rested their power, trouble at once began. It became unsafe for abolitionists to live in the South, the circulation of abolition literature was made a penal offense in several states, and several of the states passed resolutions calling on the non-slaveholding states to crush the abolition societies and make the publication of their literature a penal offense.[4]

[1] Schaper, *op. cit.*, p. 378.

[2] Gay's "Madison," pp. 17, 66–68; Hunt, "Madison and Religious Liberty," Amer. Hist. Assoc. Report, 1901, Vol. I, pp. 165–171.

[3] Georgia, 1789, South Carolina, 1790, North Carolina, 1865.

[4] Wilson, "Rise and Fall of the Slave Power," Vol. I, pp. 324 ff.

This certainly was indorsing Morris's proposition that property, not liberty, was the chief end of government.

For a long time the duty of the state to provide a system of public education made little headway in the South. The first constitution of Georgia, it is true, enjoined the establishment of public schools and North Carolina hinted at semi-public schools, but these injunctions remained practically a dead letter for many years. As a part of his revolutionary program (1776) Jefferson tried to induce Virginia to establish a system of free public schools, but failed. Later (1796) a compromise was offered in a permissive act, which allowed a majority of the justices of the peace in each county to initiate the system. The majority of the justices belonged to the landed gentry who were very jealous of being taxed for the benefit of anybody else and they made haste not to take advantage of the permissive act.

Throughout the greater part of the first half of the nineteenth century the same general story holds true of practically all the Southern states. It was the universities and academies, patronized for the most part by the well-to-do, which were subsidized by the state, to the general neglect of elementary schools, with some attempt to provide schools "for the poor." South Carolina began her "schools for the poor" in 1811, and for ten years appropriated about $30,000 per annum for their support, while giving $40,000 to the State College at Columbia.[1] As late as 1845 only 53 out of 93 counties in Georgia applied for their share of the state fund. Rather than enroll themselves as paupers many rejected the "poor schools" with contempt, preferring the badge of illiteracy to that of pauperism.

In the newer states the situation was little better. Some states endeavored to copy from New York and New England, but foredoomed their systems to failure by making their adoption permissive to the counties and by the stigma of pauperism. A writer in Louisiana said (1860) that if the state were to appropriate $300,000 annually to furnish each family a loaf of bread daily, the law could not be executed, for more than half the families would

[1] A. D. Mayo in Report of U. S. Comr. of Ed., 1895–1896, Vol. I, pp. 269–299.

not receive it. The report of the superintendent of public instruction showed that more than half the families would not accept the mental food which the state offered them. "The truth is," he concluded, "the government does more harm than good by interfering with the domestic concerns of our people." [1]

In no other realm, except in religion, did the philosophy of individualism hold such complete sway in the South. The state owed no intellectual debt to any man, but it did owe the obligation to protect every man in the property he acquired. A common objection to the free school system was that it gave the non-property owning classes power to tax the owners of property and that is the explanation of the permissive laws. To guard against this alleged injustice Louisiana, like Indiana, exempted from the payment of the school tax all persons who objected to paying it, though she did not go as far as Illinois in forbidding the taxation of any man for school purposes without his consent given in writing.[2] But here and there voices were to be heard crying in the wilderness, such as those of Jefferson and Cabell in Virginia, Calvin H. Wiley in North Carolina, and several governors of North and South Carolina, and Dr. Robert Breckenridge and Rev. Benjamin O. Peers in Kentucky. So far as concerns outward results they never accomplished much before the Civil War, but they were slowly and surely revolutionizing public sentiment. By the outbreak of the war some of the states had ceased to stigmatize their poor children as paupers and were recognizing that these children had claims upon them not based on charity. Then came the interruption of the war. The "carpet-bag" governments recognized in full the theory of public education, but squandered the public funds in a shameless orgy of corruption. Upon the overthrow of the "carpet-baggers" the whites accepted the theory of public education and put it into practice as rapidly as their limited means allowed.

One of the most fundamental of all the essential elements of

[1] "Education, Labor and Wealth of the South," by Samuel G. Cartwright, M.D., in "Cotton is King and Pro-Slavery Arguments," pp. 891–892.

[2] Mayo in Report of Comr. of Ed., 1894–1895, Vol. II, p. 1542.

civil liberty or personal freedom is equality before the law. The special privilege granted to families and to the eldest sons through the laws of entail and primogeniture were abolished in the old states at the beginning of the Revolution, though the landed gentry of Virginia were greatly annoyed at Jefferson for forcing it upon them. Free negroes never enjoyed equality before the law previous to the Civil War. Their rights were meted out to them in the same laws that dealt with slaves. Since the war all men have had — it would be incorrect to say enjoyed — nominal equality before the law. It would be easy to show that equality often becomes a mockery because of economic and social conditions and that these conditions are sometimes designedly brought about by the state, but that would lead us too far afield. In law women have held a somewhat anomalous position, in some cases enjoying special privileges, in others degraded, as were their English mothers. Only in very recent times have the women of Tennessee come into their property rights.

To the men of '76 freedom of religion and of speech and the legal incidents of political and civil liberty (republican government, jury trial, etc.) seemed of overshadowing importance. Little was said about industrial freedom. That was taken as a matter of course with the *laissez faire* policy under civil and political liberty. To-day men accept the latter as a matter of course, but they are profoundly concerned about the substance, not the shadow, of industrial freedom. The fundamental ideas about what the government might and might not do to promote this have never changed since 1776. The men of that time thought that the government might do whatever it would to promote the general welfare. Whenever it came to specific things the dominant class interpreted the general welfare in terms of their own interests. The same is true to-day. If we hold this in mind, it will help us to understand some apparent variations and inconsistencies.

With the exception of negroes, whether bond or free, every man enjoyed perfect freedom of vocation. Monopolies and perpetuities granted by the state were regarded as violating this

freedom and in some cases were expressly forbidden.[1] Yet virtual monopolies were allowed to grow up under the sanction of law guarding vested and property rights with little or no effort to control them. Of late years anti-trust legislation has been enacted in several of the states, notably in Missouri, Arkansas, and Texas, for the purpose of restricting the freedom of the few so as to promote the freedom of the many. Likewise most of the states are at last beginning to enact legislation designed to abridge the nominal freedom of contract to the capitalist and laborer that the latter may be more secure in the "pursuit of happiness," a right as inalienable as that of liberty.

That the state may directly promote the industrial welfare has always been accepted, but it must be for the general welfare or the welfare of the dominant class. Nowhere is this better illustrated than in the attitude of the South toward the questions of the tariff and internal improvements. When they entered the non-importation agreement the people of the South realized what the loss of English goods would mean to them and several of the states offered bounties for the encouragement of manufactures.[2] Soon after the war closed Patrick Henry, governor of Virginia, advised for his state a protective tariff against English goods,[3] but the slaveholding gentry did not go far in adopting this plan, since it would have cost them something. When Madison's first revenue bill came up in the first Congress Southern members joined in the scramble for such protection as would be advantageous to them and combated such as they deemed burdensome.

The next act of importance was that of 1816, which was reported by Lowndes, of South Carolina, and has been represented as a Southern measure.[4] But the facts in the case do not seem to warrant this conclusion, for, though advocated by prominent Southern men, only 24 Southern votes were cast for it to 37 against

[1] North Carolina, 1776.

[2] Force, "American Archives," Fourth Series, Vol. I, p. 1046; Vol. II, pp. 14, 30, 171, 220.

[3] Dodd, "Statesmen of the Old South," p. 38.

[4] Cf. Burgess, "Middle Period," p. 9.

it, 17 not voting.[1] Virginia cast 13 votes against it, 6 for it, and secured protection to her coal and salt. North Carolina did not cast a single affirmative vote. South Carolina gave four for it, three against it, three not voting, and secured protection to her indigo and cotton. A motion by Huger, of South Carolina, to reduce the duty on sugar from four cents to two and a half cents brought Robertson, of Louisiana, to his feet. "Let me ask, gentlemen," said he, "if tobacco, rice, and wheat were interfered with by foreign importation, whether they would not see the propriety of giving that aid, by which we should be enabled to raise these important products within our country?" Then, proceeding to the *argumentum ad hominem:* "And let them ask themselves if the cane were the favorite culture of their state, whether they would not see the propriety of sustaining it against the rival efforts of a foreign country? — The duty paid on imported sugars, if taken from the pocket of the consumer, augments the public treasury because, although it affects the price, it will not in the same degree affect the quantity imported; whereas the duty laid on imported cottons, by excluding them entirely, is added to the price of domestic manufacture, taken out of the pocket of the consumer, and put into that of the manufacturer; thus, in one case, we pay a tax to the public, in the other to individuals."[2] The tax on sugar he declared to be insufficient, while the people of Louisiana were purchasers and consumers of every other article in the bill, except one; hence his vote in opposition. Forsyth favored a duty of five cents because he expected Georgia to engage extensively in raising cane, but voted against the bill which carried only three cents.

The foregoing illustrations may be taken as typical of the attitude of Louisiana in particular and of the South in general from that day to this. Case after case might be cited of Southern members voting for particular items in which their districts were interested. In 1890 the Florida citrus fruit growers sent a dele-

[1] Annals, 14th Cong., 1st Ses., p. 1352; Biographical Congressional Directory, 61st Cong., 2d Ses.

[2] Annals, 14th Cong., 1st Ses., pp. 1258–1260.

gation to Washington to secure a tariff on their products. Mr. Harrison reminded them that Florida had voted against him, but Mr. McKinley was more complaisant, and they got what they went after.[1] In 1913 the Louisiana representatives bolted the party and voted against free sugar.

The unselfish nationalism of Calhoun on the bill of 1816 has been over-emphasized. His attitude was determined partly by genuine nationalism, partly by a desire to build up the industries of South Carolina, and partly by personal ambition. A careful reading of his speech certainly reveals the first two motives. His great object was to secure industrial independence for the nation. Neither agriculture, manufactures, nor commerce taken separately was the cause of wealth, said he; it flowed from the three combined. War was disastrous to our country, since it deprived us of the goods we wished to buy and closed the markets for the goods we wished to sell. "The recent war fell with peculiar pressure on the growers of cotton and tobacco, and other great staples of the country." He had been captivated by the home market argument and declared that after a few years we could buy and sell at home. Add to the tariff a system of internal improvements and commerce is cared for.[2] This was the justification for taxing one community for the apparent benefit of another.

This makes it certain that Calhoun expected the South Carolina cotton planters to be benefited by the tariff. Indeed, he remained silent until some one made a motion threatening the cotton manufacturers who were to buy South Carolina cotton. Even then he admitted that the policy of the bill would be very questionable, had we the means of securing immediate naval supremacy, by which the nation could guarantee the foreign market. These passages are far more important and significant than the peroration about the dangers of disunion.

As time passed and the prospect of an undisturbed peace grew brighter and the tariff failed to develop the all-sufficient home market, the South grew more and more restive under the system

[1] Personal conversation with Judge W. H. Mabry, a member of the committee.
[2] Annals, 14th Cong., 1st Ses., pp. 1331–32.

of taxing one man for the benefit of another, or rather the many for the benefit of the few, a feature roundly denounced in 1816, though the few special interests continued to ask favors. Finding their arguments on the injustice of the system of no avail, many in the South discovered a new one and declared the tariff unconstitutional,[1] an argument reëchoed in the Democratic platforms of 1892 and 1912.

Space will not permit us to trace further the history of the tariff. A few references to modern events must suffice. In 1820, Tyler of Virginia asserted that the tariff would attract capital to manufacturing until the business would be overcrowded, then, with an unsalable surplus on hand, the manufacturers would come to Congress, charge it with the responsibility for the situation, and ask for further relief to prevent ruin.[2] In 1913 an analogous situation developed in Louisiana, where the sugar planters, after enjoying protection for over a hundred years, declared that they must continue to have it or see their chief industry ruined. Senator James, of Kentucky, replied that no right became vested because special privilege succeeded in getting it through Congress.[3] Senator Williams, of Mississippi, was touched by the situation of the planters, but declared that they ought never to have been tempted into an industry where they could not stand alone and that the ancient wrong must cease.

In 1909 Representative Frank Clark, of Florida, told the framers of the Payne-Aldrich bill that they might put in anything they pleased, provided they gave his people protection on citrus fruits and lumber, and against the pauper labor of Egypt.[4] Far more statesmanlike was the conduct of Senator N. P. Byran of Florida, when the citrus growers' exchange, claiming to speak for the people of Florida, asked him to make a deal with the sugar senators of Louisiana. His answer was a flat refusal and a lecture on common honesty in regard to the question of tariff reduction, which

[1] See Ames, "State Documents on Federal Relations," pp. 133 ff.
[2] Stanwood, *op. cit.*, Vol. I, p. 186.
[3] *Collier's Weekly*, June 28, 1913, p. 9.
[4] *Ibid.*, May 24, 1913, p. 9.

had been indorsed in the platform on which he was elected. He said, "A very simple method of ascertaining whether a person believes in a principle is whether he will shrink from having it applied to himself." [1]

Practically the same story might be told of internal improvements. Whenever believed to be advantageous to those who would have to pay, then it was right and proper that the improvements be made at public expense, whether by the states or by the nation, though Monroe and a few others early doubted the constitutionality of such undertakings by the general government. Then, when the slaveholders realized that the power to do this work might involve also the right to interfere with the "peculiar institution" it was designed to benefit, they became convinced of its unconstitutionality. But it might be done by the individual states, and several of them undertook it and expended large sums of money thereon. The fight of the special interests and of localities was now transferred from the national capital to the state capitals and was particularly strong in Virginia and South Carolina. Once an undertaking was decided upon, if the state could not raise the necessary funds by taxation, it could borrow. And if it could borrow for internal improvements, it could borrow capital for banks and loan it to planters that they might buy land and slaves. With slavery gone, there has been of recent years a recrudescence of the demand for internal improvement by the nation, particularly for good roads and for the improvement of waterways.

For the most part the accepted theory and practice about natural resources has been that they belong to that part of the living generation which can get at them first, hence the monopolization of our mineral resources, water power sites, lands, and timber. Jefferson early sounded a note of warning and advised against turning the lead mines, which were limited in number, over to private ownership and recommended their operation under lease.[2] Unfortunately this advice was not followed by the nation or by any of the states until recently. In the South there is little left now

[1] *Ibid.*, May 17, 1913, p. 9.
[2] "Writings," Vol. V, pp. 207, 210.

out of private hands except the water power rights, and the people who desire to monopolize them are devotees of individualism and states' rights. The rights of the public are as yet imperfectly guarded everywhere.

XV

SOUTHERN POLITICS SINCE THE CIVIL WAR

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XV

SOUTHERN POLITICS SINCE THE CIVIL WAR

The educational and industrial progress of the South since the Civil War has been very notable. From a condition bordering on impoverishment, resulting from a long and disastrous war, during the course of which the South was overrun by the contending armies, a large portion of its male population killed or disabled, its resources destroyed, its labor system disorganized, and its institutions wrecked or allowed to fall into decay, it has fully recovered and advanced at a rate that has evoked the admiration of the whole country. Its population has ceased to be predominantly rural and its industries mainly agricultural; it has become a country of many flourishing towns and cities; it has built up a network of railroads; it has developed a system of manufacturing industries and its commercial power has multiplied many fold. To-day, the South is pulsating with a new economic and intellectual life; in proportion to its resources, no part of the country is spending more for public education; its colleges and universities have greatly increased in number and the attendance of students upon them has multiplied. At the same time, the increasing intercourse of Southern people with those in other parts of the country and with the outside world, coupled with the growth of towns and cities, has gone very far toward undermining the old provincialism of the South, developed a larger spirit of tolerance and freedom of opinion, and produced a more vigorous nationalism among the people, the results of which have been distinctly beneficial, not only to the South itself, but to the whole country.

By many outside the South, this disappearance of sectionalism and growth of nationalism is regarded as somewhat inconsistent with the solidarity of the Southern people in political matters and

the existence of a certain political stagnation which has resulted from it. In other sections of the country, with a few rare exceptions, the two-party system prevails and the voters divide on political issues. In recent years, we have seen states like Indiana, Ohio, Massachusetts, and Minnesota choose Republican electors for President and Vice-President, and at the same election choose Democratic state officers. There is no such thing as a "solid North" or a "solid West" in American politics. In the South, on the contrary, there is little or no independent voting, no division into political parties, and little evidence from the election returns that any voter holds a different opinion on political issues from any other voter. For many years after the Civil War, the very name of the Republican party was a by-word and a reproach among Southern white men, and even now respectable Southerners who find themselves in disagreement with the policies of the Democratic party hesitate to incur the odium which, in many communities, is the lot of him who votes the Republican ticket. Outside the South, it is generally agreed that this is an abnormal political condition and one which ought not to exist.

Most political writers regard the two-party system as an essential condition to the normal and successful functioning of popular government and they believe that its absence tends to render the political life of the community where it does not exist stagnant and lacking in vitality.[1] The long and uninterrupted rule of a single party whose measures and candidates are unopposed, almost inevitably leads to intolerance and indifference, if not to positive corruption, and, what is scarcely less important, the very existence of such a condition deprives the people of the educational benefit and the political training which come from wholesome party rivalry and the discussion of public questions,—one of the chief advantages as well as one of the greatest glories of popular government. Popular government is almost necessarily party government and party government implies government by discussion. Where there is no opposition party, there is little opportunity for debate and

[1] Compare the remarks of Mr. Walter H. Page at the banquet of the North Carolina Society of New York City, Dec. 7, 1908.

discussion of political issues and hence one of the chief merits of government by the people is lost.

The solidarity of the people in respect to political questions has not always prevailed in the South. From the time when political parties were first organized in this country until the Civil War — a period during which the South produced a galaxy of statesmen in whose ability the whole country felt a real pride and during which the South held an almost undisputed leadership in national affairs — there was no such thing as a "solid" South in political matters. In every Southern state there were two parties, each of which rivaled the other in respect to the number and respectability of its supporters. In the presidential election of 1824, Jackson and Adams received an almost equal vote in Maryland, and Adams received a larger vote in Virginia than did Jackson and only about 1500 less in Mississippi. In the election of 1828, Adams again outran Jackson in Maryland, received nearly as many votes in Louisiana, and a very respectable vote in various other Southern states. In 1836 the vote was fairly evenly divided between the Democratic and Whig candidates in most of the Southern states. In 1840, Harrison, the Whig candidate, carried Maryland, North Carolina, Georgia, Mississippi, Louisiana, and Kentucky. At the next election, the voters of Mississippi, Georgia, and Louisiana swung over to the other side and supported the Democratic candidate. Again in 1848 the votes of the South were pretty evenly divided between the Democratic and Whig candidates, and so it was in 1856 as between Buchanan and Fillmore. It was not unusual for a state to cast its vote for one party at an election and four years later to swing over to the opposite party. Thus Georgia voted for the Whig party in 1836 and again in 1840; in 1844 it changed its vote to the Democratic party and again in 1848 it went back to the Whig party. In 1836 the vote of Mississippi was about evenly divided between the Democrats and Whigs; in 1840 the Whigs carried the state; in 1844 the state went for the Democratic candidate and again in 1848, though by a majority of only 1000 votes.

During this period, as I have said, the South produced great

leaders and it played a part in national affairs commensurate with its importance. Of the fifteen Presidents of the United States elected between 1789 and 1861, a period of seventy-two years, nine came from the South, and the aggregate of their terms of service amounted to nearly fifty years. Of the fourteen Vice-Presidents, six came from the South; of the thirty-seven Justices of the Supreme Court appointed during this period, twenty-nine were Southern men; of the one hundred and fifty-three cabinet officers, seventy-three were from the Southern states; of the twenty-three speakers of the national house of representatives, twelve were Southern men; and so were forty-seven of the eighty-two diplomatic representatives accredited to the courts of England, France, Austria, Russia, and Spain.

The policy of the Reconstructionists changed all this. The enfranchisement of the mass of negroes and the attempt of the Republican party to enforce negro rule upon the South drove the white people to unite solidly against those whom they regarded as their oppressors. From the close of the Reconstruction period until 1896, the political solidarity of the South in national elections was never broken. In the face of the danger of negro domination, white men who believed in protective tariffs and other national policies advocated by the Republican party surrendered their convictions and voted solidly with their fellow-citizens who held opposite views on these questions. Since that time, there has been but one party of any consequence in the South, and that a white man's party, and but one great issue, namely, the maintenance of white supremacy. The motive back of this policy was the simple instinct of self-preservation rather than that of revenge or hatred. But this political solidarity, once so necessary to the preservation of Southern civilization from the effects of negro domination, resulted in the political effacement of the South and the loss of its leadership in national affairs. From 1861 to 1913, the South furnished the nation with no President or Vice-President. Not even the Democratic party itself dared nominate a Southern man as its candidate, so certain would have been his defeat. Of the eleven speakers of the national house of representatives elected

during this period, only two were Southern men; of one hundred and twenty-five cabinet members, the South furnished only fourteen; of twenty Justices of the Supreme Court, only five were taken from the South; and of one hundred and twelve diplomatic representatives accredited to the courts of England, France, Austria-Hungary, Russia, the German Empire, Italy, and Spain, only ten were Southern men. Thus it came to pass that the South not only lost its leadership, but it ceased to play any part in national affairs. With a few exceptions, it has produced no great leaders since the War.[1] Great political leaders do not develop readily under conditions such as exist where there are no opposition parties, where there is no party rivalry and little or no discussion of national issues, and where everything that bears the image of a single party is accepted as a matter of course. In short, the very atmosphere of the South has been unfavorable to the growth of statesmen.[2] It is true that the triumph of the Democratic party in the country at large in 1912 has again brought the South into political leadership in spite of its solidarity, but the moment the Republican party returns to power the political effacement of the South will follow as before.

As I have said, election campaigns in the South are characterized by little discussion of national issues because there is no opposing party whose arguments have to be met and answered; so far as national policies are concerned, no voter has to be convinced by argument and won over to the support of the views of the dominant party; the political mind of the South on national issues is already made up and the general results of the election are already known in advance. Elections are little more than a mere perfunctory compliance with the forms of the constitution and election laws, and, consequently, they have no significance to the South or to the country at large. Under such circumstances,

[1] Compare an article by Mr. C. H. Poe, "Suffrage Restrictions in the South; its Causes and Consequences," *North American Review*, Vol. 175, p. 534.

[2] Compare the views of Mr. William P. Few in an article entitled "Southern Public Opinion," in the *South Atlantic Quarterly*, Vol. 4, p. 1; also an article by the same writer entitled "The Independent Voter in the South," in the same magazine, Vol. 5, p. 1.

it is entirely natural that the voters should take little interest in congressional or presidential elections. The result is, the number of votes cast in some of the Southern states is so small as to make it worth considering whether these states might not be relieved of the expense of holding elections the results of which mean nothing, and the Democratic candidate counted as elected as soon as he has been nominated. A few examples may be cited as illustrations of the conditions which I have described. In Mississippi in 1898, where there were 120,000 registered voters, the total vote cast for the seven representatives in Congress was only 48,000. In 1903 the total vote cast for governor in this state aggregated only 32,191. In the presidential election of 1900, the total vote cast in Florida for presidential electors was 39,332; in Louisiana it was 67,914; in Mississippi it was 57,459, and in South Carolina, 50,813. In the election of 1904, the total vote cast for presidential electors in Florida was 39,307, whereas, in Washington, with substantially the same population, it was 145,151; in Georgia it was 109,992 as compared with 485,703 in Iowa with about the same population. In Louisiana it was 65,000 as against 324,590 in Kansas with substantially the same number of inhabitants; in South Carolina it was 55,139 as against 225,733 in Nebraska with 270,000 fewer inhabitants; and in Mississippi, 56,933 as against 331,545 in California with 65,000 fewer inhabitants.[1] At a recent election eleven representatives in Congress from Georgia were elected by 27,000 voters; seven representatives were elected in Louisiana by 48,000 voters; eight representatives from Mississippi were elected by 53,000 voters; and seven representatives from South Carolina were elected by 52,500 voters. At the election of 1904, the average vote cast for representative in the congressional districts of Louisiana was 7701 as against 46,370 in Kansas; 7877 in South Carolina as against 37,607 in Nebraska; and 7280 in Mississippi as against 41,443 in California.

But it will be said that the voters of the South express their opinions on political issues at the primaries, which are the prin-

[1] These statistics are compiled from tables in Stanwood's "History of the Presidency" (1912).

cipal elections in that part of the country. These elections are preceded by long-drawn-out campaigns of lively discussion and debate, in which the masses of the voters take an extraordinary interest,[1] consequently they derive the same educational benefit from participation in these campaigns that they would if the two-party system existed and they participated in the regular elections. It must be remembered, however, that a primary is not really an election; it is merely a preliminary contest among the voters of a particular party, not for the election of officials and the expression of opinion upon political policies, but for the selection of those who are to be the candidates of that party at the election. In a primary election, and especially where the one-party system prevails, the contest turns more largely upon the personality of the candidates than upon their views concerning political policies, since it may be presumed that those who seek to be the nominees of a particular party, and therefore its representatives, will not hold very widely divergent views in respect to the policies for which the party stands. The views which a candidate for a party nomination may hold in respect to issues upon which parties themselves are divided, are not likely to enter into the contest, the chief consideration being which of the aspirants for the nomination is the fittest representative of the party and the most likely to defeat the candidates of the opposition in the ensuing election. Consequently, however much interest the people of the South may take in their primary contests, the resulting educational value to the electorate cannot be what it would be if their elections were spirited contests between opposing parties holding different views in regard to public questions and political policies, instead of a more or less perfunctory and formal ratification of the results of the primary, which is the real election.

As I have said, the motive which has held the white voters of the South together since the Civil War has been the instinct of self-preservation. For a long time it was the declared purpose of the dominant party at the North to force upon the Southern

[1] Thus at the primaries in Mississippi in 1903, 99,281 votes were cast for governor, whereas at the regular election which followed, only 32,191 were cast.

states the rule of a numerical majority when that majority was an ignorant race; under these circumstances the Southern white people were justified in standing together in political matters and in sacrificing their individual convictions on national questions in order to prevent such a catastrophe. To have divided their strength would have been fatal to the very existence of their civilization. For the present, the supremacy of the white race is well established, and if the white people were sure that a division of their strength would not open the way for the return of the negro to power there is little doubt but that they would cease to vote solidly in their elections. In every Southern state where there is any considerable negro population, the negro race as a whole has been disfranchised, and the rest of the country has acquiesced in, if it has not entirely approved, all the devices by which it was accomplished. More than twenty years have elapsed since Mississippi adopted a constitution the avowed purpose of whose authors was to eliminate the negro from politics, and her example has been followed by most of the other Southern states, and notwithstanding the fact that the great political party which endowed the negro with the high privilege of citizenship and the right to vote, has controlled the national government during most of this period, it has made no serious attempt to intervene in his behalf through the enforcement of the constitutional amendments which give him, indirectly at least, the right of suffrage equally with the white man. The force bills were long ago repealed or declared unconstitutional, and the power of the national government over its own elections has remained unexercised. In late years, there has scarcely been a protest against the disfranchisement of the negro, and recent events indicate that so far as his political rights are concerned he has been virtually abandoned by the party which gave him freedom, citizenship, and the right of suffrage and which for a time endeavored by force to insure him the full and equal enjoyment of these rights and privileges. The truth is, the white people of the South now have the sympathy of the great mass of the people throughout the entire country, in their efforts to rid their electorates of the ignorant and unfit, and there is not a

Northern state which, if the same conditions existed there, would not restrict the suffrage to those who are capable of exercising it intelligently.[1]

The occasional platform declarations of the Republican party in favor of the rigid enforcement of the Fourteenth and Fifteenth Amendments are, as many of the Republican leaders themselves frankly avow, merely intended for political effect and are not to be taken seriously. As Dr. Albert Shaw, editor of the *Review of Reviews*, has recently remarked, the Republican party has not the slightest intention of reducing the representation of the Southern states for disfranchising the negro.[2] Mr. Roosevelt, who had a right to speak for his party at the time, declared in a letter written in November, 1904, to Mr. W. R. Meredith, President of the Virginia state bar association, "I do not believe there is a single individual of any consequence who seriously dreams of cutting down Southern representation, and I should have no hesitation in stating anywhere and at any time that as long as the election laws are constitutionally administered without discrimination as to color, the fear that Southern representation in Congress will be cut down is both idle and absurd."

The right of the South to limit the suffrage to those who can read and write or who own property and pay taxes has been definitely affirmed by the Supreme Court of the United States, and as yet not even those restrictions which were introduced for the purpose of excluding illiterate negroes without, at the same time, disqualifying illiterate white men, such as the so-called "grandfather" and "old soldier" provisions, have been successfully attacked in the Supreme Court, and the indications are that they, too, will be allowed to stand, notwithstanding their plain inconsistency with the spirit if not the letter of the Fifteenth Amendment. Apparently, it is now settled that the white race of the South shall be allowed to deal with the negro problem according to its own sense of justice and expediency and to determine for

[1] Compare the remarks of Professor A. B. Hart in his, "The Southern South," p. 177.

[2] The *Review of Reviews*, December, 1908, p. 650.

itself, regardless of the constitution of the United States, the conditions under which the privilege of voting and holding office shall be exercised. The calm judgment of all fair-minded men must be that the attitude of the rest of the country toward the policy of the South in respect to its treatment of the negro in respect to his political rights has been characterized by liberality and genuine sympathy. In view of these facts the excuse for the political solidarity of the Southern whites seems to many persons without reasonable foundation. Yet it must not be overlooked that the present exclusion of the negro from politics is not necessarily permanent. It does not follow that because the blacks cannot now vote or do not vote they would not vote if the whites should divide. At present the very solidarity of the white race makes it useless for them to vote. In some of the Southern states there are already thousands of registered negro voters, and there is no state in which other thousands could not qualify under the existing election laws. In recent years there has been a very notable decrease of illiteracy among the negroes and the moment the solidarity among the whites disappears, those who are now qualified will exercise their electoral privileges and others will be encouraged to register, so that in a brief space of time there will be a large and active negro electorate in every Southern state, in whose hands will rest the balance of power.[1] Nevertheless it is by no means certain that the results would endanger white supremacy. Should this supremacy be threatened, new methods of excluding the negro would undoubtedly be devised. Moreover, it does not necessarily follow that the division of the white race would be so nearly equal as to give the negroes control — at least the experience of Northern states where there is a considerable negro vote does not warrant such a conclusion. Finally, there is no reason to suppose that the negro vote would be massed solidly against the white parties. The probability is that the white party whose policies were most favorable to the rights of the negro race would attract a large proportion of the negro vote. The oft-cited example of North

[1] Compare on this point the views of Mr. A. H. Stone, "The American Race Problem," p. 365.

Carolina, where the white voters divided in 1897, enabling the negroes to gain control of the local offices in various parts of the state, is not conclusive because at the time there were no restrictions on the suffrage in that state and the great mass of the negroes were qualified voters. That is no longer the case in any Southern state where there is a large negro population, and what happened in North Carolina could not happen again under the existing suffrage laws. But whatever might be the results of a division of the white vote upon the political future of the negro, he is at present effectively excluded, and so long as the solidarity of the whites continues he will remain politically inactive.

Everywhere in the South the whites are in political control. Even in the black belt where the negro population outnumbers many times that of the white race, all the offices, with a few unimportant exceptions, are filled by white men. With all the millions of negroes in the South, there is not one who holds a state or county office or occupies a seat in the legislature and, except in a few small towns and villages, inhabited almost wholly by negroes, there is not to be found a colored mayor, member of the municipal council, justice of the peace or even a policeman. Negroes rarely sit on juries, they are not allowed to serve in the militia and, of course, they are never appointed to membership on registration or election boards. Practically the only offices to which they are eligible are those of the federal government, and so few are, in fact, appointed to these offices in the South that when the Republican national committee in 1912 prepared an exhibit of Mr. Taft's negro appointees for the campaign text-book, it was able to give the names of less than a dozen negro office holders of any consequence in the South.[1] The fact is, Presidents McKinley, Roosevelt, and Taft appointed almost as many Democrats as Republicans to the more important federal offices in the South, and in the majority of cases where Republicans were appointed, an honest effort seems to have been made to choose men of good character and fitness, men who enjoyed the confidence and respect of the white people of the communities in which the offices were located.

[1] Republican Campaign Text Book, 1912, p. 239.

Of the eighty appointments made by President Roosevelt to federal offices in South Carolina, only one was a negro. Of the thousands of postmasters appointed by him, there were no negroes except a few who were continued in the offices which they were filling when he became President.[1] Yet we sometimes hear such statements as that made recently by a Southern senator that the people of the South have been ostracized and treated by the administration at Washington as "aliens." Happily, the number of Southern men who are capable of being deceived by such demagoguery is rapidly decreasing. It is clear that both as regards federal offices and state offices, the negro is practically excluded in the South.

In view of these facts it is to be regretted that the question of the negro should continue to be made a political issue by certain Southern politicians and exploited as political capital when there are so many other living issues the discussion of which would be of so much more real benefit to the people. The truth is, as a prominent Southerner has remarked, one hears very little in the South about the negro problem when there are no elections. Some years ago when a candidate for governor of a Southern state announced that "my campaign is not nigger! nigger! but white man! white man!" there was a genuine feeling of relief among the more intelligent voters who desired to hear a discussion of live issues of real interest to the people. In the campaign between Leroy Percy and J. K. Vardaman for Senator in Mississippi in 1910, Percy protested against the injection of the negro question into the campaign in the following language:[2]

[1] Compare an article by H. L. West on "President Taft and the South," in *The Forum*, Vol. 41, p. 292.

[2] Jackson (Mississippi) *Clarion Ledger*, January 9, 1910. Compare also the following remarks of state senator W. D. Gibbs on the same subject: "I cannot endorse this constant crusade against the inferior race. Should it attempt to assert its political rights, we have the white line and the constitution of 1890 to hold up our hands. To be everlastingly discussing the negro, merely makes him overestimate his importance, and renders it much more difficult to deal with a situation always serious anyway. The negro is here by the act of the slave traders and our forefathers, and not of his own volition. He is free by the act of the white people of both sections who engaged in the war. He was made a voter by the vic-

"I protest against the democracy of the state of Mississippi's being committed to the political methods used and the issues created by Governor Vardaman. They can bring the state no good from abroad, but over and above and beyond anything else, I want the democracy of the state of Mississippi to put the brand of its disapproval now and forever upon any man who seeks, for the purpose of political gain, to breed discord and strife between the two races, which, under the fiat of an Almighty God, have been placed on Mississippi soil for the purpose of working out their common destiny. Not only is white supremacy absolutely established in every office from that of constable to supreme court judge, but, it is recognized and acquiesced in by the negroes, as every man of you knows.

"What is the principle to which Governor Vardaman means to submit the democracy of the state of Mississippi, when he says that his unending fight shall be for the repeal of the Fifteenth Amendment and modification of the Fourteenth Amendment? It means that he advocates the ceaseless agitation of this question by the people of the South until the end is accomplished. I shrink back affrighted from the consequences of such a policy. It means that through the days and through the months and through the years that are to come, it is to be continually agitated, abuse and vituperation is to be heaped upon the negro in order to prove what every man in Mississippi knows, that he should not be allowed to exercise the right of suffrage. The passions of both races are to be appealed to, the negro is to be rendered discontented and morbid, dissatisfied and restless.

"The prosperity of no country can bear the burden of a discontented peasantry; with the passions of both races inflamed, lawlessness is to be encouraged and allowed to run rampant, clashes are to occur. We ought to plan no campaign of discord and dissension, leaving behind its trail of blood, struggling for what no sane man knows can be attained, for if the repeal of this amendment could ever come to us, it will come from without, and not within the South."

torious North; he was disfranchised by us in spite of the fifteenth amendment. Why then should he be forced into the arena of political discussions, and thus made to assume a position of sullen hostility toward us?

"The Democratic party thirty-five years ago put the negro out of state politics and in all of its platforms promised him protection in his educational and civil rights. We are getting along pretty well with him, all things considered, and I am opposed to making him a subject of political campaigning in the Democratic party. The races are at peace. It is necessary to preserve this status if we are going to live among the negroes. It is utter folly to make the negroes think that the people of Mississippi wish to deprive them of their schools. It is worse than folly to pursue the course that would make them feel that we are not their friends, and thus give them grounds to assert their political rights." Jackson (Mississippi) *Clarion Ledger*, January 19, 1910.

The late Senator L. Q. C. Lamar, in a notable address delivered shortly after the overthrow of the negro carpet-bag régime in his state, expressed the hope and ventured the prediction that the people of the South would from that time on be less engrossed with the negro question and would be free to turn their attention to the consideration of economic and other questions that were of more pressing interest to the people. The subsequent disfranchisement of the negro and his complete elimination by constitutional methods from politics should have removed him from the domain of political controversy. But instead of that, there has recently been a recrudescence of race agitation in several parts of the South. Lately, the country has been treated to the spectacle of two Southern senators traveling about the country denouncing indiscriminately all negroes as "veneered savages," dwelling upon the criminality and barbarity of the race as a whole, advocating lynch law, and declaring that the education of the negro merely increases his criminal propensities and unfits him for the menial service for which he was intended by the Creator. In the campaign between Vardaman and Williams for United States senator in Mississippi Vardaman advocated the repeal of the Fifteenth Amendment as a policy "absolutely necessary for the peace and prosperity of the South, for the harmony of the two races, and for the fulfilment of the commercial and industrial possibilities of the South." All other questions, he asserted, "paled into insignificance" when compared with this one. He declared that he was opposed to education for the negro, since he was intended by the Almighty for a field-hand and for nothing else. The negro, he said, had "no political or social rights which the white man was bound to respect and so far as I am concerned, he will never have any. He will never vote again in this state because he is utterly incapable of understanding the genius of self-government." [1]

[1] Referring to the folly and injustice of Vardaman's indiscriminate abuse of the negro race, Williams said, "When we find a good negro, we must encourage him to stay good and grow better. We are doing too little of that. The old adage, 'Give a dog a bad name and you have made a bad dog' is a good one. Indiscriminate cursing of the whole negro race, good and bad alike, is an exemplification of the adage. I have frequently thought how hard it was for a good negro, especially

It was not enough for his more conservative opponent to reply that the Fifteenth Amendment had already been repealed so far as its operation in the South was concerned, and had been repealed by the Southern states themselves, with the acquiescence of the people of the rest of the country.

This agitation of the race question by the politicians is ill-timed, and the effects are regrettable. It can have no other result than to inflame the public mind, array the races against each other, deprive the South of a desirable and much needed immigration, and retard the development of a wholesome public opinion on real issues of living interest to the people. Moreover, it not only contributes nothing toward the solution of the real race problem, but in reality complicates it and makes the solution increasingly difficult.

"To the South, the negro question," says Mr. Thomas Nelson Page, "has been for nearly forty years the chief public question, overshadowing all others and withdrawing her from due participation in the direction and benefit of the national government. It has kept alive sectional feeling; has inflamed partisanship; distorted party politics; barred complete reconciliation; cost hundreds of millions of money and hundreds, if not thousands, of lives, and stands ever ready like Banquo's ghost to burst forth even at the feast." [1] After years of struggle, Mr. Page goes on to remark, it was supposed to have been sufficiently settled for the whites to divide once more on the great economic questions on which hang the welfare and progress of the people, but suddenly there has been a recrudescence of the whole question and in recent years it has again been injected into politics and made a leading political issue.

The fact is, the people of the South have allowed themselves to be so completely absorbed by the negro question that they have,

during campaign times, to stay good or to grow better when he could not come within the sound of a white speaker's voice without hearing his whole race indiscriminately reviled without mention of him as an exception, even in the neighborhood where he was known to be one." "The Negro in the South," *Metropolitan Magazine*, November, 1907.

[1] "The Negro, the Southerner's Problem," p. 3.

to a certain extent, become incapable of clear and independent thinking upon other questions. The feeling that the solidarity of the South in political matters is essential to the preservation of white supremacy has also naturally produced a certain intolerance, the effect of which has tended to deaden their intellectual life and to create an atmosphere unfavorable to the development of freedom of discussion and independent political action. It has produced what the late Chancellor Hill of the University of Georgia called the "deadly paralysis of intellect due to the enforced unanimity of thought within the lines of one party." It has deprived the South of the benefit of healthy, vigorous public opinion on national questions, and has in a measure cut it off from the liberalizing currents of contemporary life and given it a local sectional outlook.[1] The Rev. John E. White of Atlanta, speaking of the absorption of the Southern public mind by the negro question, says:

"As long as we struggled for that which was good for everybody everywhere, we moved with Providence, and the South led the van. There were great human concerns involved in the building of the republic. The whole world was interested in it. It was a work ennobling to a people — the inspiration of a great national usefulness. The disaster began when the South began to think only for itself — began to have only one problem. Monomania is a disease. This is the final fact, though other causes were contributory to it. This is the false note in Southern life. The question for safe and sound citizenship, then, is the question of getting ourselves free from the thrall of one issue and of interesting the people in matters that stimulate life and that generate moral and intellectual energy. What I ask you and what I wish every thoughtful Southern man to consider is whether the negro question is a fair price for Southern progress — whether there are not for us and for our children other and greater benefits which are endangered by our absorption in it? It is whether the negro question is great enough to make a great people?

"I have been much of my life intimate with average Southerners — the people in the country sections — and I have marked it that this average man responds at once to the idea that we would be better off,

[1] Compare W. P. Few, "Southern Public Opinion," in the *South Atlantic Quarterly*, Vol. 4, p. 1; C. H. Poe, "Suffrage Restrictions in the South; its Causes and Consequences," *North American Review*, Vol. 175, p. 534; and Banks, "The Passing of the Solid South," *South Atlantic Quarterly*, Vol. 8, p. 101.

everything would be better off, if we were less absorbed by this one question.

"There is an unorganized and undeveloped moral instinct in the South that is in an unhealthy and unprofitable business. Now, for ten years the South has had a flood of agitation on the negro problem. Let us take stock and see where we are. We are less fit to think straight and feel true on the subject than we were ten years ago. Mentally and morally, we are less capable of statesmanship on that subject than we were."

The time has come when the South ought to free itself from the thraldom of a single issue and think more of questions that more vitally affect its economic welfare. I venture the opinion that had the time and space wasted by the Southern newspapers and political orators on the Booker Washington dinner at the White House and the Minnie Cox "incident" been utilized in the discussion of such questions as education, the conservation of the natural resources of the South, or the more efficient protection of life and property, the results would have been productive of more real benefit. The fact is, the amount of attention bestowed on such questions has been out of all proportion to their real importance.

Many intelligent Southern men now feel that there is a place in the South for a political party that will advocate constructive policies and relegate the negro question to the limbo of oblivion, where it properly belongs. They have already grown very tired of the agitation of the negro question by political demagogues. One of these, Mr. Hannis Taylor, a Southerner of the old school, declares that the time has come for the South to "emancipate herself from the deadly one-party system which excludes her from political communion with the rest of the Union and at the same time strangles the political genius that was once the very basis of her power. Above all, the time has come when every Southern man, without being menaced by the banished specter of the negro question, may be permitted to be in the South as every man in the North, a Democrat or a Republican according as his real convictions lead him one way or the other." [1] The late Edgar

[1] "The Solid South, A National Calamity," *North American Review*, Vol. 189, p. 6.

Gardner Murphy of Alabama expressed the feeling of the more intelligent men of the South when he said:

"We have longed for the day to come when we might be occupied with something else besides the negro. We shudder at 'negro domination.' Yet the man who is putting the negro over us, who is enshrining him like a hideous tyranny within the apprehensions and imaginations of our children, and is placing him as a specter of gloom by every fireside, is not the demagogue of the North, but the demagogue of the South, magnifying every incident of the long, unhappy quarrel of the sections, harping upon every symbol of the estrangement of our races, and forcing us into so morbid a preoccupation with our peculiar and provincial difficulties that the South, if his guidance became supreme, would become perforce not only the land of one party but the land of one idea, of one subject, because the land of one all-consuming passion." [1]

The same opinion has been expressed by another distinguished Southern Democrat, now ambassador to England, who, referring to the political effacement of the South resulting from its solidarity, says:

"And what constructive influence have the Southern states in our larger political life? From some of them, where parties have fallen low, we have seen men go to one national convention as a mere unthinking personal following of a candidate even then clad in garments of twofold defeat; and to the conventions of the other party, we have sometimes seen office-holding shepherds with their crooks drive their mottled flocks to market. We are tired of this political inefficiency, this long isolation, and these continued scandals; and we are tired of the conditions that produce them. If parties are to be instruments of civilized government, the conditions that produce such scandals must cease. We must have in the South a Democratic party of tolerance and a Republican party of character; and neither party must be ranged on lines of race. We aspire to a higher part in the Republic than can be played by men of closed minds or of unthinking habits of organized ignorance. We aspire to a share in the constructive work of the government in these stirring days of great tasks at home and growing influence abroad." [2]

There is, it seems to me, a good deal of truth in what Mr. Taft said in his address at Greensboro, North Carolina, in 1907, that "if the Southern people had kept up with the times, had they at

[1] "The Task of the Leader," *Sewanee Review*, Vol. 15, p. 26.

[2] Remarks before the North Carolina Society of New York City, December 7, 1908.

the ballot box expressed their sentiments upon the living issues of the day instead of allowing themselves to be frightened by a specter and a shadow of the past, their political importance as communities and the significance of their views upon men and measures would have been vastly enhanced.

In view of the recent return of the South to power in spite of its solidarity, it may be asserted by some that the argument in favor of the two-party system as a necessary condition to the enjoyment by the South of its proportionate share in national affairs is largely without force. But it is evident that so long as the solidarity of the South remains, its influence in national affairs can only be temporary and occasional, for as soon as the Republican party returns to power, the South will practically disappear from the map so far as its political influence is concerned. On the other hand, the North and West are never politically effaced by the triumph of either party in the country at large; they still retain their political significance as communities and exert an influence on national affairs regardless of which political party is in control of the government, and it is because their political strength is not massed solidly for a single party and because their elections have a significance which elections in the South do not have. Whenever the political solidarity of the South disappears, the success of neither party in the nation as a whole will result in the complete political effacement of the Southern states, but its voice will still be heard and its influence in national affairs still felt irrespective of whether the Democratic or Republican party holds the reins of power at Washington.

In recent years there have been signs of an increasing independence among the white voters of the South, and the results of the elections in a number of Southern states between 1894 and 1908 afforded the basis for many predictions that the political solidarity of the South was threatened with destruction.[1]

[1] Compare on this point, Banks, "The Passing of the Solid South," in the *South Atlantic Quarterly*, Vol. VIII, p. 101; Dawson, "Will the South be Solid Again?" *North American Review*, Vol. 164, p. 193; S. S. Patterson, "The Political Isolation of the South," *Sewanee Review*, IX, 94. McLaurin, "The Breaking up of the Solid South," *World's Work*, Vol. 2, p. 985; and McLaurin, "The Commercial Democracy

In the congressional elections of 1894 in Maryland and Kentucky the Democratic and Republican vote was about equally divided; in Missouri the Republicans elected ten of the fifteen representatives, while in Tennessee the Republicans elected six of the ten representatives and also the governor. In 1895 the entire Republican state ticket was elected in Kentucky and Maryland. In 1896, McKinley carried Kentucky, Maryland, and West Virginia and received only 15,000 fewer votes in Georgia than did Bryan. In Alabama he received 54,000 as against 131,000 for Bryan; in Tennessee 148,000 compared with 166,000 for Bryan; in Texas 167,000 as against 370,000 for Bryan; 37,000 in Arkansas and 22,000 in Louisiana as against 110,000 and 77,000 respectively for Bryan. In 1900 McKinley again carried Maryland and West Virginia, and in 1908 Taft carried Delaware, West Virginia, and Missouri and in Maryland he received an almost equal vote with Bryan. There was also a heavy Republican vote in Kentucky, Tennessee, and North Carolina and a considerable Republican vote in some of the gulf states.[1]

Speaking, at the time, of the probable growth of an opposition party, the Charleston *News and Courier* said: "The day is probably more than four years distant when the Republican candidate will gain the electoral votes of Southern states that are not border states, but the coming into being of a Republican party, including representative men of character and intelligence in such states as South Carolina, Georgia, Alabama, and Louisiana would be an event of much greater significance and one by no means out of the pale of reasonable calculation. The time has come when many worthy Southern men who stand for something in their communi-

of the South," *North American Review*, Vol. 173, p. 657; E. P. Clark, "The Solid South Dissolving," *The Forum*, Vol. 22, p. 263; B. J. Ramage, "The Dissolution of the Solid South," *Sewanee Review*, Volume 4, p. 493.

[1] Thus in Alabama Taft received 25,308 votes against 74,374 for Bryan; in Florida 10,654 as again 31,104 for Bryan; in Georgia 41,696 as against 72,413 for Bryan; in Kentucky 235,711 as against 244,000 for Bryan; in North Carolina 114,937 as against 136,995 for Bryan; in Oklahoma 110,474 as against 122,363 for Bryan; in Tennessee 118,324 as against 135,608 for Bryan; in Virginia 52,573 as against 82,946 for Bryan.

ties have ceased to look upon a Republican President with repugnance because he is a Republican, and there are influential groups of Southern men here and there in sympathy with much for which the Republican party now stands."

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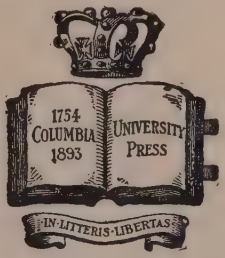

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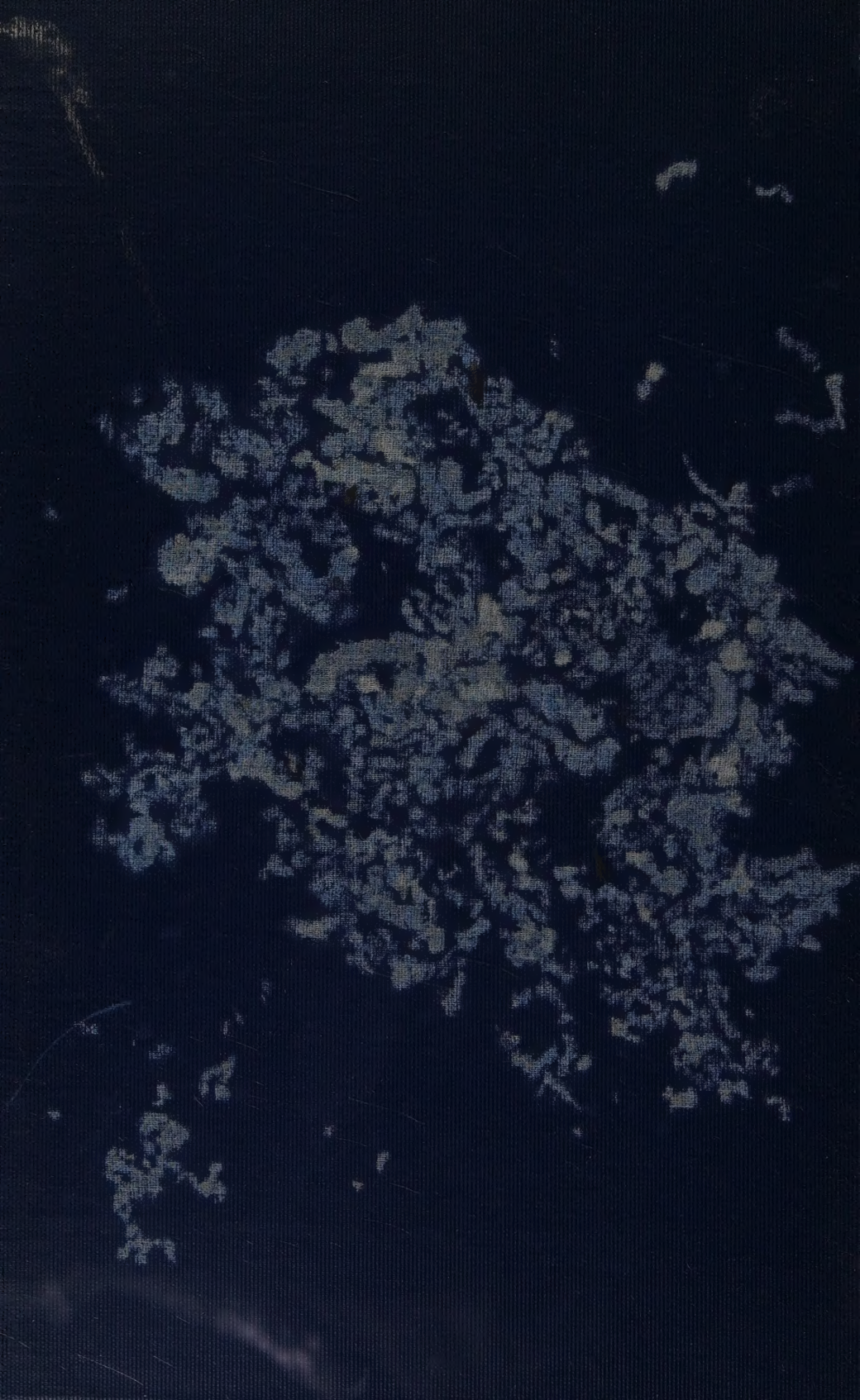
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